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**The Problem of Systemic Violation of Civil and Political Rights in  
Cameroon: Towards a Contextualised Conception of Constitutionalism**

**By Laura-Stella Eposi Enonchong**

**A thesis submitted in partial fulfillment of the requirements for the  
Degree of Doctor of Philosophy in Law**

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## **DEDICATION**

For Ebangha and Ngowo



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## DECLARATION

I declare that this thesis is my original work. I confirm that the thesis has not been submitted for another degree at the University of Warwick or any other university.

I acknowledge that, part of Chapter 4 has been accepted for publication in revised form as, ‘Judicial Independence and Accountability in Cameroon: Balancing a Tenuous Relationship’ (2012) 5 *African Journal of Legal Studies* 313-337 and ‘Habeas Corpus under the New Criminal Procedure Code of Cameroon: Progress or Status Quo?’ (2013) 58(1) *Journal of African Law* (forthcoming).

Laura-Stella Eposi ENONCHONG

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## **ABSTRACT**

Post-independent Cameroon has grappled with the problem of systemic violation of civil and political rights (CPR) despite a transition from single party dictatorship to multiparty democracy in the 1990s. Various legislative measures including the adoption of a supposedly 'rights friendly' constitution in 1996 have done little to ameliorate that problem.

This thesis adopts a concept of constitutionalism, based on contemporary international standards, to analyse the problem of CPR violations from the perspective of the constitutional arrangements in Cameroon. It examines the system of separation of powers, the method of securing judicial independence and the mechanisms for judicial review. The argument is made that the problem can be attributed in part to the predominant influence of the French civil law system in Cameroon's bijural legal system. Although for historical reasons, Cameroon operates both the English common law and the French civil law, constitutional developments have continued to be influenced by the latter which lends itself to practices that are not sufficiently supportive of constitutionalism as defined herein.

The thesis, however, goes further to explore how the constitutional system could be reinforced to provide a more conducive framework for the protection and enhancement of CPR. Drawing on two strands of arguments, one highlighting features of the common law system that can be more supportive of constitutionalism and the other which highlights the value of indigenous antecedents of constitutionalism, the thesis proposes the development of a contextual model which is more reflective of Cameroon's peculiar legal and socio-political circumstances. It proposes what is described as an Optimal Integrative Approach (OIA) as a framework for developing a contextual model, more conducive for the protection and enhancement of CPR in Cameroon.

## LIST OF ABBREVIATIONS

AI	Amnesty International
ARCAM	<i>Assemblée Représentative du Cameroun</i>
CAT	Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CGI	Citizens Governance Initiative
CLRC	Constitution of <i>La République du Cameroun</i>
CNU	Cameroon National Union
CPC	Criminal Procedure Code
CPDM	Cameroon People's Democratic Movement
CPR	Civil and Political Rights
CRTV	Cameroon Radio and Television
CSM	<i>Conseil Supérieur de la Magistrature</i>
CWU	Cameroon Welfare Union
ELECAM	Elections Cameroon
ENAM	School of Administration and Magistracy
FDA	Foundation for Democratic Advancement
FSC	Freedom of Social Communication
HJC	Higher Judicial Council
HoC	House of Chiefs
HOS	Head of State
HRC	United Nations Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights

JEUCAFRA	<i>Jeunesse Camerounaise Francaise</i>
JOO	Judicial Organisation Ordinance
NCHRF	National Commission on Human Rights and Freedom
NDI	National Democratic Institute
NLC	Nigerian Legislative Council
OHADA	Organisation for the Harmonisation of Business Law in Africa
OIA	Optimal Integrative Approach
OMJ	Decree Organising the Ministry of Justice
PC	Penal Code
PM	Prime Minister
PMPP	Public Meetings, Processions and Parades
SCHCL	Southern Cameroons High Court Law
SCNC	Southern Cameroons National Council
SCOC	Southern Cameroons Order in Council
SDF	Social Democratic Front
SDO	Sub-Divisional Officer
SDNP	Sustainable Development Networking Programme
SOM	Statute of the Magistracy
TIC	Transparency International Cameroon
UC	<i>Union Camerounaise</i>
UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Programme
UPC	<i>Union des Populations du Cameroun</i>
USDS	United States Department of State

## TABLE OF LEGISLATION

### Benin

Constitution of the Republic of Benin 1990

Loi N° 91-009 du 31 Mai 2001, Loi Organique sur la Cour Constitutionnelle

### Botswana

Constitution of the Republic of Botswana 1966(as amended in 2006)

### Cameroon

British Cameroons Ordinance N° 5 of 1924

Cameroons under British Administration Order-in-Council N° 1621, 1923

Constitution of *La République du Cameroun* 1960

Constitution of Cameroon (Federal) 1961

Constitution of Cameroon (Unitary) 1972

Constitution of Cameroon 1996 (as amended)

Criminal Procedure Code 2006

Customary Courts Ordinance 1948

Decree of 16 August 1912

Decree of 22 May 1924

Decree N° 66/DF/205 of 28 April 1966

Decree N° 72/270 of 02 June 1972 Promulgating the 1972 Constitution

Decree N° 91/249 of 1991 on Identification of Journalists & Auxiliaries of the profession

Decree N° 91/287 of 21 June 1991 on the National Communication Council

Decree N° 95/048 of 08 March 1995 on the Status of the Magistracy.

Decree N° 97/015 of 22 January 1997 on benefits and remuneration of the President and *Procureur Général* of the Supreme Court

Decree N° 97/016 of 22 January 1997 on benefits & remuneration of certain magistrates

Decree N° 2000/158 of 03 April 2000 on Private Audiovisual Communication Enterprise

Decree N° 2005/122 of 15 April 2005 organising the Ministry of Justice

Decree N° 2006/001 of 03 January 2006 on the dismissal of a magistrate

Decree N° 2006/002 of 03 January 2006 on the dismissal of a magistrate  
Decree N° 2008/463 of 30 December 2008 appointing Electoral Commission members  
Decree N° 2012/038 of 23 January 2012 reorganising the National Communication Council  
Decree N° 2012/119 of 15 March 2012 to set up Administrative Courts  
Decree N° 2012/208 of 23 April 2012 dismissing a magistrate of the bench  
Law N° 59-56 of 31 January 1960 promulgating the Constitution of *La République du Cameroun*

Law No.67/LF/1 of 12 June 1967 Introducing the Cameroonian Penal Code  
Law N° 73/1 of 08 June 1973 on the Internal Rules of the National Assembly  
Law N° 75/1 of 09 May 1975 amending certain provisions of the 1972 Constitution  
Law N° 79/4 of 29 June 1979 on Customary and Alkali Courts  
Law N° 82/14 of 26 November 1982 on the Higher Judicial Council  
Law N° 84/1 of 02 February 1984 amending certain provisions of the 1972 Constitution  
Law N° 090/046 of 19 December 1990 repealing the 1962 Subversion Ordinance  
Law N° 90/047 of 19 December 1990 on regulating the State of Emergency  
Law N° 90/052 of 19 December 1990 on Freedom of Social Communication  
Law N° 90/053 of 19 December 1990 on Freedom of Association  
Law N° 90/54 of 19 December 1990 on the Maintenance of Law and Order  
Law N° 90/55 of 19 December 1990 on Public Meetings Processions and Parades  
Law N° 90/56 of 19 December 1990 on the regulation of Political Parties  
Law N° 92/002 of 14 August 1992 on Municipal Council Elections  
Law N° 92/10 of 17 September 1992 on Vacancy of, and Election to the Presidency  
Law N° 96/04 of 4 January 1996 amending the Freedom of Social Communication Law  
Law N° 96/06 of 18 January 1996 promulgating the 1996 Constitution  
Law N° 2000/015 of 19 December 2000 on Public Funding for Political Parties  
Law N° 2004/004 of 21 April 2004 on the Constitutional Council  
Law N° 2004/005 of 21 April 2004 on the Constitutional Council Membership  
Law N° 2002/005 of 02 December 2002 amending the Internal Rules of the National Assembly  
Law N° 2005/007 of 27 July 2005 on the Criminal Procedure Code  
Law N° 2006/011 of 29 December 2006 on the organisation of the Electoral Commission

Law N° 2006/015 of 29 December 2006 on Judicial Organisation  
Law N° 2006/016 of 29 December 2006 on the organisation of the Supreme Court  
Law N° 2006/022 of 29 December 2006 on the organisation of Administrative Courts  
Law N° 2008/001 of 14 April 2008 amending certain provisions of the 1996 Constitution  
Law N° 2011/001 of 06 May 2011 amending the Electoral Commission membership  
Law N° 2012/001 of 19 April 2012 on the Electoral Code  
Loi Cadres 1956  
Ordinance N° 62/OF/18 of 12 March 1962 relating to subversion.  
Ordinance N° 72/4 of 26 August 1972 on Judicial Organisation  
Ordinance N° 72/6 of 26 August 1972 Organising the Supreme Court  
Ordinance N° 72/7 of 26 August 1972 on the Court of Impeachment  
Southern Cameroons High Court Law 1955  
Southern Cameroons (Constitution) Order-in-Council 1960

### **Democratic Republic of Congo**

Constitution of the Democratic Republic of Congo 2005.  
Law N° 08/013 of 2008 on the Congolese *Conseil Supérieur de la Magistrature*

### **France**

Constitution of the Fifth French Republic 1958 (as amended)  
  
Decree N° 2010-148 of 16 February 2010 on the application of Loi N° 2009-1523 of 10 December 2009  
  
Loi Constitutionnelle Law N° 2008-724 of 23 July 2008 on the Modernisation of the Institutions of the Fifth Republic  
  
Loi N° 2009-1523 of 10 December 2009 on the application of article 61(1) of the Constitution  
  
Ordonnance N° 58-1067 of 7 November 1958 relating to the *Conseil Constitutionnel*

### **Germany**

Basic Law for the Federal Republic of Germany as amended by Act of 21 July 2010



Federal Constitutional Court Act 1951

## **Ghana**

Constitution of the Republic of Ghana 1992

## **Namibia**

Constitution of the Republic of Namibia 1990 (as amended in 2010)

## **Nigeria**

Criminal Code of the Eastern Region 1942

Constitution of the Federal Republic of Nigeria 1999

Deposed Chief Removal Ordinance 1929

Nigerian Criminal Code 1916

Nigerian (Legislative Council) Order-in-Council 1946

Nigerian Native Courts Ordinance 1914

Nigeria Protectorate Order-in-Council 1922

Seditious Offences Act of 1909

## **South Africa**

Constitution of the Republic of South Africa 1996

Act No. 34 of 2001 substituting some sections of the Constitution.

## **United Kingdom**

Human Rights Act 1998

## **International Instruments**

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (CAT)

Conventions on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 03 September 1981) 1249 UNTS 13(CEDAW)

International Covenant on Civil and Political Rights 1966 (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

Treaty of Versailles 1919

The Marrakesh Agreement Establishing the World Trade Organisation, April 1994

United Nations Charter (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)

### **Regional Instruments**

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter)

African Charter on the Rights and Welfare of the Child, CAB/LEG/24.9/49 (1990)

European Convention for the Protection of Human Rights and Fundamental Freedoms 04 November 1950, ETS 5; 213 UNTS 221

Treaty of Rome establishing the European Economic Community, 1957

Treaty on the Harmonisation of Business Law in Africa, 17 October 1993

### **Other Regional and International Instruments**

African Commission's Recommendations on the Respect and Strengthening of the Independence of the Judiciary (1996)

Bangalore Principles of Judicial Conduct (2002)

European Charter on the Status of Judges (1998)

International Bar Association Minimum Standards of Judicial Independence (1982)

Latimer House Guidelines (2003)

Montreal Declaration (1983)

Syracuse Principles (1981)

United Nations Basic Principles on the Independence of the Judiciary (1985)

United Nations Human Rights Committee, 'General Comment 29: States of Emergency (Article 4)' UN Doc. CCPR/C521/Rev.1/Add.11 (2001)

United Nations Human Rights Committee, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights' 28 September 1984, U.N. Doc. E/CN.4/1985/4

## **Others**

### ***Mandate and Trusteeship Agreements for Cameroon***

British Mandate for the Cameroons as Confirmed and defined by the Council of the League of Nations. London, 20 July 1922

French Mandate for Cameroon as Confirmed and defined by the Council of the League of Nations. London, 20 July 1922

Cameroon under French Trusteeship Agreement as Approved by the General Assembly of the United Nations, 1945

Cameroon under United Kingdom Trusteeship Agreement as Approved by the General Assembly of the United Nations, 1945

### ***United Kingdom Parliamentary Records***

HC Deb 09 April 1959, vol 603, cols 32-3W.

HC Deb 11 June 1959, vol 606, cols 1153-4.

HC Deb 19 May 1960, vol 623, cols 1494-8.

HC Deb 21 July 1960, vol 627, cols 713-4.

HC Deb, 01 August 1961, vol 645, cols 1332-51.

HL Deb 10 February 1954, vol 185 cols 795-7.

## **TABLE OF CASES**

### **African Commission on Human and Peoples Rights**

Anuak Justice Council v. Ethiopia, (2006) AHRLR 97, (ACHPR 2006)

Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroon, Communication No. 272/2003, (ACHPR 2009)

AVEV & INTERIGHTS v Cameroon, (2009) AHRLR 47 (ACHPR 2009)

Civil Liberties Organization v Nigeria, Communication No. 129/94 (ACHPR 1995)

Embga Mekongo v Cameroon (2000) AHRLR 56 (ACHPR 1995)

Jawar v The Gambia, Communication No. 147/95, 149/96, (2000) AHRLR 107 (ACHPR 2000)

Kevin Mwanga Gumne et al v Cameroon (2009) AHRLR 9 (ACHPR 2009)

Open Society Justice Initiative & Njawe Noumenie v Cameroon (2006) AHRLR 75(ACHPR 2006)

### **Cameroon**

Agbortar & Oben v Chief Bessong, (1968) W.C.L.R. 43

Albert Chidi v The People, Suit No. LM/98/M/2002

Basil Yagai (NUDP) v MINATD, Judgment No. 118/CEL/2007

Benjamin Itoes v Joseph Ncho, Suite No. BCA/1/81

Benz Enow Bate v ELECAM, Decision No. 13/CEP of 20 September 2011

Bonu Innocent v Bakongo Simon (1997) 1 CCLR 142

Cameroon Music Corporation v Ministry of Culture, Judgment No. 192/2011/CS/CA of 07 September 2011

Compagnie Commerciale et Immobilière Africaine des Chargeurs Réunis v État du Cameroun Oriental, Arrêt No. 163/A/CFJ/CAY of 08 June 1971

D. S. Oyebowale v Company Commander of Gendarmerie for Fako. Suit No. HCF/0040/HB/09

Eglise Presbytérienne du Cameroun, Ordonnance No. 02/CS/CA of 26 October 1994

Etengeneng J. T. v The Governor of South West Province, (1998) 1CCLR 9

Eitel Mouelle Kouala v République Fédéral du Cameroun, Arrêt No. 178/CFJ/CAY of 29 March 1972

Feyou de Happy v Rep of Cameroon, Judgement No. 103 CS/CA of 30 May 1991

Immaculate Vefonge v Samuel L. Yupke, Appeal No. CASWP/CC/21/81

James v. Tchoussongou, (2001) 1 CCLR 730

Jesco Manga Williams v Chantier Naval, (2005) 2 CCLR 99

Kouang Guillaum v État du Cameroun, Judgment No 66 ADD/CS/CA of 31 May 1979

Kouang Guillaume v État du Cameroun, Jugement No 53/CS-CA of 26 June 1980

Libam Kouang v Cameroon, Judgement No. 8CS/CA of 25 November 1976

Louis Tobie Mbida v ELECAM, Decision No. 12/CEP of 20 September 2011

Maïramou Oumarou, Jugement No. 404/cor of 12 May 2003

Mbetene Eyabe Justin v ELECAM, Decision No. 15/CEP of 20 September 2011

Me Eyoum et Cie v État du Cameroun, Ordonnance No 33/HC/TGI, Mfoundi of 27 May 2010

Ministère Public et Ministère des Postes et Télécommunications v Sieur Mounchipou et Autres (unreported)

Mvogo Jean-Marie v État du Cameroun, Judgment No. 1203/CS/CA/1999-2000

Namondo Makake v. Bernard O. Bilai Suit No: HCF/164/IR/04-05

Ngoa J. Bienvenue and Tachoula Jean, Judgment No 19/CIV/LI/TGI

Nguemgne v the People & Ngasse Judgment No. 31/FCR of 15 April 2008

Nji Ignatius v The People, HCF/22M/03-04

Nve Ndongo v Ngaba Victor, Decision No.10 (Federal Supreme Court) 17 October 1968

S.A. Ami Voyage v Ayisi Ndzana et autres, Ordonnance de Référé No. 200/C/TPI/Y

SGTE, Arrêt No. 68 CFJ/CAY of 30 August 1969

Social Democratic Front (SDF) v État du Cameroun, Ordonance No. 01/OSE/CCA/CS/2009

Société des Grands Travaux de l'Est, Arrêt No.4/CFJ of 28 October 1970

Société Forestière de la Sanaga v État du Cameroun, Arrêt No. 5/CFJ/AP of 15 March 1967

Standard Chartered Bank v Paul Sinju et Autres, Judgment No. 32/CS/CA of 27 October 2005

Sub Divisional Officer (SDO) Oku v. Shey Ndifon & Oku Rural Radio Association, Suit No. HCB/05M/2003-2004, affd (2005) BCA/17/2005

The People v Dr Martin Luma (2002) 1CCLR, 11

*The People v Nya Henry & 4 Others* (2005) 1CCLR, 61, revd, BCA/MS/11C/2002

Wakai & 172 Others v The People (1997) 1CCLR, 127

### **European Court of Human Rights**

*Lawless v Ireland* (No.3) (App. 332/57) Judgment of 01 July 1961

### **European Commission on Human Rights**

*Greek Case*, 12 YB1 Ecom HR (1969)

### **France**

Syndicat Général des Ingénieurs-conseils & Administration des Douanes v Société des Cafés Jacques Vabre, Judgment of 24 May 1975, CC(chamber mixte), 1975, D.S. Jur, (Fr) 497

CC Décision No. 98-408 DC 22 January 1999

CC Décision 2001-449 DC of 4 July 2001

CC Décision No. 201014/22 QPC of 30 July 2010

CE Ass. 20 October 1989, Nicolo, Rec. Lebon, 190

CE 02 March 1962, Rubins de Debans

CE 29 April 1970, Comités des Chômeurs de la Marne et sieur Le Gac, Recueil Lebon, 279

CE 20 February 1989, Allain

CE 7 November 2001, No. 237961 Tabaka

CE 18 July 2008, No. 318567 Joël M

Cour de cassation (assemblée plénière) arrêt No. 481 of 16 October 2001

## **Ghana**

New Patriotic Party v Electoral Commission [1993-94] 1Ghana Law Report 124

## **Kenya**

Jesse Kamau & 25 Others v Attorney General [2010] KLR 1

Patricia A. Ochieng & Two Others v Attorney General & another, High Court Petition No. 409 of 2009.

## **Nigeria**

Alawoyin v Attorney General, Northern Region, Suit No. Z/22/1959

Dahiru Cheranci v Alkali Cheranci, Suit No. K/M26/1959

Eshugabi Eleko v Government of Nigeria [1931] AC 662, 670

Lakanmi v Attorney-General [1971] U. Ife. L.R. 201

## **South Africa**

S v Makanyane 1995 (3) SALR 391

S v Zuma 1995(2) SALR 642 [15] (CC)

## **Uganda**

Akankwasa Damian v Uganda (Constitutional Petition No.5) UGCC7 (21 April 2011)  
Shabahuria Matia v Uganda [1999] UGHC1

## **United Kingdom**

Connelly v D.P.P [1964] AC 1254

M v. Home Office & another [1994] 1AC377

## **United Nations Human Rights Committee**

Abdoulaye Mazou v Cameroon (2001) AHRLR 42 (HRC 2001)

Njaru v Cameroon, (2007) AHRLR 21 (HRC 2007)

Pierre Désiré Engo v Cameroon, Communication No. 1397/2005  
CCPR/C/96/D/1397/2005

Titianhojo v Cameroon, (2007) AHRLR 21 (HRC 2007)

Toonen v Australia, Communication No.488/192 U.N.Doc. (CPR/C/50/D) 88/1992(1994)

Young v Australia Communication No. 94/2000 U.N.Doc. CCPR/C/78/D/941/2000).

## **United States**

Hamdan v Rumsfeld, 126 S. Ct 2749, 2798 (2006)

## **Zambia**

Chiluba v Attorney General, 2003 [ZMSC] 4



# INTRODUCTION

## 1. AN OVERVIEW OF THE PROBLEM

In the early 1990s, following the collapse of the Cold War, several Eastern European and sub-Saharan African states embarked on constitutional reforms. Those reforms brought to the fore the renewed importance of constitutions in organising governmental power and in particular the protection of civil and political rights (CPR). In the case of Cameroon, it is doubtful to what extent constitutional reforms have improved on the protection of CPR, as its record in that respect has been consistently poor.<sup>1</sup> According to independent reports issued by some domestic and international human rights organisations, CPR are persistently violated with impunity.<sup>2</sup> This thesis takes as a central focus an examination into the problem of systemic violations of CPR in Cameroon.

Events that occurred in February 2008 are symbolic of that problem. At that time there were widespread demonstrations in major towns in Cameroon organised in protest at both escalating costs of living and proposed constitutional amendments to eliminate presidential term limits.<sup>3</sup> The amendments would have permitted President Paul Biya, who has been in power since 1982, to run for another term. Rather than address the grievances of the public, President Biya accused the opposition of trying to orchestrate insecurity and attempting to oust him through unconstitutional means.<sup>4</sup> Security forces responded to the demonstrators with repression, using water canons, tear gas, batons and

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<sup>1</sup> See for instance U.S. Department of State (USDS) Human Rights Reports on Cameroon for 2011, 2010, 2009 and 2008 which can be accessed at < [www.state.gov/j/drl/rls/hrrpt/](http://www.state.gov/j/drl/rls/hrrpt/)>. See also Susan Dicklitch, 'Failed Democratic Transition in Cameroon: A Human Rights Explanation' (2002) 24(1) *Human Rights Quarterly* 152.

<sup>2</sup> *ibid.* See also Freedom House, 'Freedom in the World 2011: Cameroon' <[www.freedomhouse.org/report/freedom-world/2011/cameroon](http://www.freedomhouse.org/report/freedom-world/2011/cameroon)> accessed 20 July 2012; Committee to Protect Journalists, 'Attacks on the Press in 2011: Cameroon' (21 February 2012) <<http://cpj.org/africa/cameroon/>>; Observatoires Nationale des Droits de L'Homme, 'Rapport de L'Observatoires National des Droits de L'Homme 2008-2010', 21-23, <[www.ccf-terresolidaire.org/e\\_upload/pdf](http://www.ccf-terresolidaire.org/e_upload/pdf)>; Amnesty International (AI), 'Impunity Underpins Persistent Abuse' (29 January 2009) <[www.amnesty.org/en/library/info/AFR17/001/2009](http://www.amnesty.org/en/library/info/AFR17/001/2009)> accessed 15 May 2012.

<sup>3</sup> Amnesty International, 'Impunity Underpins' (n 2) 36; USDS, '2008 Human Rights Report: Cameroon' (25 February 2009) <[www.state.gov/j/drl/rls/hrrpt/2008/af/118990.htm](http://www.state.gov/j/drl/rls/hrrpt/2008/af/118990.htm)> accessed 12 June 2012.

<sup>4</sup> BBC News, 'Cameroon Head Blames Opposition' (28 February 2008) <<http://news.bbc.co.uk/1/hi/world/africa/7267731.stm>> accessed 12 June 2012.

rifles with live ammunition. About 100 people were reportedly shot and killed by security forces, over 1,500 were arbitrarily arrested and detained, some were severely tortured, while others were charged and summarily tried without minimum guarantees of a fair trial.<sup>5</sup> Local radio stations which reported on the demonstrations or organised debates to discuss the proposed constitutional amendments were arbitrarily shutdown by the government.<sup>6</sup> The police beat and harassed journalists covering the demonstrations and confiscated their equipment.<sup>7</sup> In response to international denunciation of the security forces' actions, the government of Cameroon delivered a report to the United Nations Human Rights Committee (HRC) and argued that security forces acted in self-defence and that their response was proportionate to the disorder caused by the demonstrators.<sup>8</sup>

The February 2008 debacle was not an isolated occurrence. In fact, the systemic violation of CPR has been a problem throughout Cameroon's history. The government of former President Ahmadou Ahidjo which lasted from independence and reunification till 1982 was said to be authoritarian.<sup>9</sup> Under that regime, multipartism was abolished, criticism of the government was repressed through stringent laws circumscribing freedom of speech, while activists were arbitrarily arrested, detained and tortured.<sup>10</sup> It was hoped that, the transfer of leadership in 1982 to the incumbent President Biya, and the political transition to multipartism would transform Cameroon's authoritarian past and guarantee better

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<sup>5</sup> Amnesty International, 'Impunity Underpins' (n 2) 10; United Nations Human Rights Committee (HRC), 'Concluding Observations of the Human Rights Committee: Cameroon' (CCPR/C/CMR/CO/4, 04 August 2010) 5, para 18 <[www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.CMR.CO.4.doc](http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.CMR.CO.4.doc)> accessed 13 December 2010.

<sup>6</sup> Amnesty International, 'Impunity Underpins' (n 2) 21-23; USDS, '2008 Human Rights Report: Cameroon' (n 3) s 2(a).

<sup>7</sup> *ibid.*

<sup>8</sup> USDS, '2009 Human Rights Report: Cameroon' (n 1) s 1(a); HRC, 'Concluding Observations' (n 5) 5, para 18.

<sup>9</sup> Richard Joseph, 'France in Africa' in Richard Joseph (ed), *Gaullist Africa: Cameroon under Ahmadou Ahidjo* (Fourth Dimension Publishers 1978) 8. See also Mbu Etonga, 'An Imperial Presidency: A Study of Presidential Power in Cameroon', in Ndiva Kofele-Kale (ed), *An African Experiment in Nation Building: The Bilingual Cameroon Republic Since Reunification* (Westview Press 1980) 151-155. Cameroon was administered as separate UN trust territories by Britain and France respectively from 1916. The French administered section (French Cameroon) gained independence in 1960 and became known as *La République du Cameroun*. The Southern Cameroons administered by Britain gained independence in 1961 by integrating with *La République*. The history of Cameroon is discussed below in ch 2.

<sup>10</sup> Joseph (n 9) 8; Etonga (n 9) 151-155. See also Abel Eyinga, 'Government by State of Emergency' in Richard Joseph (ed), *Gaullist Africa* (n 9) 106; Willard Johnson, *The Cameroon Federation: Political Integration in a Fragmentary Society* (Princeton University Press 1970) 197-198.

protection for CPR. In that regard, under the government of President Biya, a number of international instruments such as the International Covenant on Civil and Political Rights (ICCPR), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the African Charter on Human and Peoples' Rights (ACHPR) were ratified in 1982, 1986 and 1989 respectively. Moreover, following the 'third wave democratisation'<sup>11</sup> or what Kwasi Prempeh has referred to as 'Africa's constitutionalism revival'<sup>12</sup> in the 1990s, the government made various commitments to the values of constitutionalism and to improve the exercise of CPR. To that end a number of laws dubbed the Liberty Laws were promulgated to enhance the exercise of various freedoms,<sup>13</sup> regulate the maintenance of law and order and a state of emergency.<sup>14</sup> Again in 1992, the government embarked on setting up the National Commission on Human Rights and Freedom (NCHRF). Those reforms were underscored by the 1996 constitutional revision, which according to the Minister of Communications at the time purportedly, 'establishe[d] the supreme valor of human dignity, the balance and separation of powers'<sup>15</sup> and established as, 'the key element... the solemn declaration and the vigorous defence of human rights.'<sup>16</sup>

In spite of these innovations, Cameroon's record remains poor. Such practices as torture, extrajudicial killings and forced disappearances have persisted.<sup>17</sup> In 2000, following visits

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<sup>11</sup> The phrase was first used by Samuel Huntington to refer to the transition from authoritarian or non-democratic rule to democratic regimes in the early 1990s. Huntington, *Third Wave: Democratisation in the Late Twentieth Century* (University of Oklahoma Press 1991) 15-16.

<sup>12</sup> Kwasi Prempeh, 'Africa's "Constitutionalism Revival": False Start or New Dawn?' (2007) 5(3) *International Journal of Constitutional Law* 469.

<sup>13</sup> Law No. 90/052 on the Freedom of Social Communication (FSC); Law No. 90/053 on Freedom of Association; Law No. 90/055 on Public Meetings, Processions and Parades; Law No. 90/056 on Political Parties, all promulgated on 19 December 1990.

<sup>14</sup> Law No. 90/47 on the State of Emergency; Law No. 90/54 on the Maintenance of Law and Order.

<sup>15</sup> Augustin K. Kouomegni, 'Minister of Communication's Introductory Note to the 1996 Constitutional Amendment' *Fundamental Legal Texts* (vol 1, National Printing Press 1996).

<sup>16</sup> *ibid.* Other reforms included the creation of a Department for Human Rights in the Ministry of Justice, the transfer of the Penitentiary Service from the Ministry of Territorial Administration to the Ministry of Justice in 2005 and the promulgation of a new uniform Criminal Procedure Code in 2006, with scope to better secure the rights of the defence. An Electoral Code has also been recently adopted in April 2012.

<sup>17</sup> Dicklitch (n 1) 154-158; Amnesty International, 'Impunity Underpins' (n 2) 34, 36; USDS, '2010 Human Rights Report: Cameroon' (n 1) 1; World Organisation Against Torture, 'Cameroon: Series of Enforced Disappearances in the North Province' (CMR 04 April 2008) <[www.omct.org/urgent-campaigns/urgent-interventions/cameroon/2008/04/d19217/](http://www.omct.org/urgent-campaigns/urgent-interventions/cameroon/2008/04/d19217/)>; Marga Lacambe, 'Cameroon: Series of Forced Disappearances'

to prisons and detention centres, the United Nations Special Rapporteur described torture in Cameroon as widespread and systemic.<sup>18</sup> Over a decade since the publication of that report torture is still a grave concern.<sup>19</sup> In 2010, the United Nations Human Rights Committee expressed grave concerns regarding the persistence of torture and called on the government to take systemic measures to eradicate that practice among security officers.<sup>20</sup>

A report issued by *Bertelsmann Stiftung*<sup>21</sup> described the regime of President Biya as an authoritarian regime with the tendency to stifle political opposition of any form.<sup>22</sup> It also noted that the regime responds to opposition and other grievance from the public through repression with the use of security forces.<sup>23</sup> Security forces arbitrarily arrest civilians and in particular opposition leaders, journalists and human rights activists as a means of pre-empting challenge or criticism against the regime.<sup>24</sup> Moreover, although the Constitution guarantees freedoms of speech, press and association<sup>25</sup> other statutory instruments circumscribe the exercise of these freedoms. As already mentioned, foremost are the so-called Liberty Laws, some provisions of which circumscribe press freedom by criminalising libel and defamation<sup>26</sup> and impose heavy pecuniary and custodial sentences

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(8 April 2008) <[www.desaparecidos.org/notas/2008/04/cameroon](http://www.desaparecidos.org/notas/2008/04/cameroon)> accessed 05 April 2010; UK Foreign Office. 'Cameroon Country Profile' (July 17 2006) <[www.fco.gov.uk/servlet](http://www.fco.gov.uk/servlet)> accessed 05 April 2010.

<sup>18</sup> United Nations Commission on Human Rights (UNCHR), 'Report of the Special Rapporteur, Sir Nigel Rodley, Submitted Pursuant to Commission on Human Rights Resolution 1998/38', (E/CN.4/2000/9/Add.2). See also Olivia Ball, 'Torture in Cameroon: Every Morning Just Like Coffee' (Medical Foundation for the Care of Victims of Torture, 2002) <[www.freedomfromtorture.org/document/publication/5387](http://www.freedomfromtorture.org/document/publication/5387)> accessed 20 July 2012.

<sup>19</sup> HRC, 'Consideration of Cameroon's Fourth Periodic Report' (CCPR/C/CMR/Q/4, 12-30 October 2009) 3, para 15; HRC, 'Concluding Observations' (n 5) 5, para 17; Observatoires Nationale des Droits de L'Homme (n 2) 21-23; USDS, '2010 Human Rights Report: Cameroon' (n 1) s 1(c).

<sup>20</sup> HRC, 'Concluding Observations' (n 5) 5, para 17.

<sup>21</sup> *Bertelsmann Stiftung* is one of the largest German based charitable foundations committed to social change and the common good. Its work includes strengthening civil society organisations in the area of democracy, freedom and sustainable development. See [www.bertelsmann-stiftung.de/cps/rde/xchg/SID-689C6A2E-70CAC8A6/bst\\_engl/hs.xsl/271.htm](http://www.bertelsmann-stiftung.de/cps/rde/xchg/SID-689C6A2E-70CAC8A6/bst_engl/hs.xsl/271.htm).

<sup>22</sup> Bertelsmann Stiftung, 'Bertelsmann Transformation Index 2012- Cameroon Country Report' (Gütersloh: Bertelsmann Stiftung, 2012) 8 <[www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf](http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf)> accessed 20 July 2012.

<sup>23</sup> Bertelsmann Stiftung (n 22) 20, 22.

<sup>24</sup> *ibid* 7. See also Freedom House, 'Freedom in the World 2011: Cameroon' (n 2); Dicklitch (n 1) 156.

<sup>25</sup> Constitution of Cameroon 1996, Preamble.

<sup>26</sup> For instance Law No. 90/52 as amended by Law No. 96/04 of 4/01/96 on Freedom of Social Communication (hereafter Freedom of Social Communication (FSC) Law). See also Charles Fombad,

for criticism against the President and government officials.<sup>27</sup> Amnesty International and the United States' Department of State have asserted that libel laws are used to gag the press and in particular to prevent local journalists from reporting abusive behaviour of state officials.<sup>28</sup> Other provisions of the laws regulating press freedom and mass communication vest administrative authorities with wide discretionary powers to suspend or ban print media or mass media for public policy reasons.<sup>29</sup> Like the libel laws, this has provided a formidable basis for banning organisations that are critical of the government.<sup>30</sup> According to the Committee to Protect Journalists and Reporters without Borders (amongst others) Cameroonian journalists face formidable challenges in attempting to expose arbitrary governmental practices as they are subject to arbitrary arrests and detention, torture and malicious prosecutions.<sup>31</sup> Cameroon has been rated consistently since 2007 as 'not free' by Freedom House.<sup>32</sup> The latter has concluded as recently as 2010 that although the Constitution guarantees free speech 'genuine freedom of expression remains elusive'.<sup>33</sup>

There are also persistent problems with democratic rights of participation and a flawed electoral system which facilitates electoral rigging and other unfair advantages in favour

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'Freedom of Expression in the Cameroonian Democratic Transition' (1995) 33(2) *Journal of Modern African Studies* 211, 218-221.

<sup>27</sup> See for instance the Penal Code, ss 113, 153, 154, 240, 307 which prescribe pecuniary and custodial sentences for libel and defamation related offences such as 'contemptuous' statements about public officials.

<sup>28</sup> Amnesty International, 'Impunity Underpins' (n 2) 18; USDS, '2010 Human Rights Report: Cameroon' (n 1) s 2(a). See also International Freedom of Expression Exchange, 'RSF Urges Government to take Action on Media Reform in Mission Report' <[www.ifex.org/cameroon/2011/10/06](http://www.ifex.org/cameroon/2011/10/06)> accessed 06 January 2012; RefWorld, 'Freedom of Press 2011: Cameroon' <[www.unhcr.org/refworld/docid/4e5f71b527.html](http://www.unhcr.org/refworld/docid/4e5f71b527.html)> accessed on 06 January 2012.

<sup>29</sup> FSC Law, ss 13, 14, 17(1).

<sup>30</sup> USDS, '2010 Human Rights Report: Cameroon' (n 1) s 2(a); Fanny Pigeaud, *Au Cameroun de Paul Biya* (KARTHALA 2011) 173-180; Francis Nyamnjoh, *Mass Media and Democratisation in Cameroon in the Early 1990s* (Langaa Books 2011) 59.

<sup>31</sup> Committee to Protect Journalists (n 2); Reporters without Borders, 'After Visiting Cameroon, Reporters without Borders Urges Government to take Action' (5 October 2011) <<http://en.rsf.org/cameroun-after-visiting-cameroon-reporters-05-10-2011,41120.html>> accessed 12 June 2012.

<sup>32</sup> See Freedom House Reports on Cameroon from 2007-2011 available at <[www.freedomhouse.org/report/freedom-world/](http://www.freedomhouse.org/report/freedom-world/)> accessed 20 July 2012.

<sup>33</sup> Freedom House, 'Freedom in the World 2010: Cameroon' <[www.freedomhouse.org/report/freedom-world/2011/cameroon](http://www.freedomhouse.org/report/freedom-world/2011/cameroon)> accessed 20 July 2012.

of the ruling Cameroon People's Democratic Movement (CPDM).<sup>34</sup> These culminate to establish an atmosphere adverse to genuine political opposition. According to the *Bertelsmann Stiftung* report, Cameroon has one of the lowest levels of democratic progress on the continent.<sup>35</sup> They assert further that elections held since the reintroduction of multipartism in the 1990s have been seriously flawed and therefore lacked democratic value.<sup>36</sup> Those assertions resonate with concerns raised by other institutions including the Commonwealth, the National Democratic Institute and the Foundation for Democratic Advancement.<sup>37</sup> In the Presidential election held in October 2011 in which the incumbent President Paul Biya won a landslide majority (75%), independent observers noted gross irregularities which marred the credibility of the election.<sup>38</sup>

## 2. AIMS OF THE STUDY AND RESEARCH QUESTIONS

In the light of the preceding observations, this thesis aims firstly, to provide some explanation as to the possible source(s) of the problem of systemic violations of CPR in Cameroon. Secondly, to identify what possible alternative solutions could be adopted with a view towards enhancing the protection and enhancement of those rights.

To achieve these aims, the following questions will be addressed: Do constitutional systems matter for the effective protection and enhancement of CPR? If so, what constitutional system exists in Cameroon and to what extent can the problem be

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<sup>34</sup> Foundation for Democratic Advancement (FDA), '2011 Global Electoral Fairness Audit- Cameroon's Presidential Electoral System' pp 18, 19 (09 October 2011); <<http://foundationfordemocraticadvancement.blogspot.co.uk/2011/08/cameroons-republic-presidential.html>> accessed 06 January 2012.

<sup>35</sup> Bertelsmann Stiftung (n 22) 4.

<sup>36</sup> *ibid* 6.

<sup>37</sup> All Africa 'Commonwealth Observers on Cameroon Poll: "not credible".' <[www.afrol.com/articles](http://www.afrol.com/articles)> accessed 01 May 2010>; Foundation for Democratic Advancement (n 34) 1, 18, 19; National Democratic Institute, 'Interim Report: International Delegation to the Presidential Elections in Cameroon' (28 October 1992) 92 <[www.ndi.org/files/0822\\_cm\\_interim\\_102892.pdf](http://www.ndi.org/files/0822_cm_interim_102892.pdf)> accessed 05 January 2012.

<sup>38</sup> Commonwealth Secretariat, '2011 Cameroon CET Presidential Election Report' (22 December 2011) <[www.thecommonwealth.org/files/242978](http://www.thecommonwealth.org/files/242978)> accessed 06 January 2012; Foundation for Democratic Advancement (n 34); USDS, '2011 Human Rights Report: Cameroon' (n 1)1.

attributed to it? Further, to the extent that the problem can be attributed to the constitutional system, what measure(s) can be adopted towards its improvement?

### 3. STATEMENT OF THE THESIS

In addressing the above questions, the thesis advances two main hypotheses. First, the problem of systemic violations of CPR in Cameroon can be attributed in part to the predominant influence of the French colonial constitutional legacy in Cameroon's bijural legal system. Second, a solution to that problem can be derived through a more contextual conceptualisation and application of constitutionalism.

The thesis will resort to a contemporary conception of constitutionalism to support the hypothesis that constitutional systems matter in the protection of CPR. Constitutionalism, as understood in this thesis, is a concept that deals with the way power is allocated to governmental institutions, their relationship with the citizenry and how those powers are exercised and disciplined to provide optimum opportunities for the realisation of good governance objectives, of which the exercise of fundamental rights (CPR inclusive)<sup>39</sup> has increasingly become a defining objective.<sup>40</sup> Constitutionalism requires at a minimum a constitution with a fundamental rights provision and the mechanism for their enforcement which should include a system of separation of powers, institutional checks and balances, the independence of the judiciary and a system of judicial review (of administrative and legislative acts).<sup>41</sup> The basic premise underlying the rationale for a system of separation

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<sup>39</sup> The fundamental rights ideology espoused in the contemporary understanding of constitutionalism particularly after the collapse of the Cold War advocates recognition of both CPR and socio-economic rights. See David Beetham, 'What Future for Economic and Social Rights' (1995) 43 *Political Studies Quarterly* 41; Bellamy & Castiglione, 'The Communitarian Ghost in the Cosmopolitan Machine: Constitutionalism, Democracy and the Reconfiguration of Politics in New Europe' in Bellamy (ed) *Constitutionalism, Democracy and Sovereignty: American and European Perspectives* (Aldershot 1996); Ersnt-Ulrich Petersmann, 'Time for a UN 'Global Compact' for Integrating Human Rights into the Law of Worldwide Organisations: Lessons from European Integration' (2002) 13 *European Journal of International Law* 621; Ingolf Pernice, 'Multi-level Constitutionalism in the European Union' (2002) *European Law Review* 511; Frank Michelman, 'The Constitution, Social Rights and Liberal Political justification' (2003) 1(1) *International Journal of Constitutional Law* 13.

<sup>40</sup> This is discussed further in ch 1.

<sup>41</sup> S. N. Ray, *Modern Comparative Politics: Approaches, Methods and Issues* (Princeton-Hall of India Press 1999) 111-112; Michel Rosenfeld, 'The Rule of Law and the Legitimacy of Constitutional Democracy' (2001) 74 *Southern California Law Review* 1307, 1307; Neil Walker, 'Taking Constitutionalism beyond the

of powers and checks and balances is that those normative standards are geared at pre-empting the arbitrariness and tyranny that inheres in the over-concentration and uncontrolled exercise of power.<sup>42</sup> Judicial independence at the minimum purportedly promotes the rule of law by providing scope for a fair, equitable and accessible process of dispute resolution. While judicial review also promotes the rule of law by ensuring government officials act in accordance with the law and by ensuring that the corpus of legislation regulating the exercise of fundamental rights are consistent with constitutional guarantees. These elements, when adequately conceptualised, should ideally act collectively to provide a more conducive framework for the protection and enhancement of the fundamental rights provisions in the constitution.

Indeed, there is fairly wide consensus that constitutionalism has become a legitimate benchmark for assessing governmental systems and their protection of fundamental rights.<sup>43</sup> While that may be the case, it may also be prudent to question the form that constitutionalism should take. Is it possible to construct a ‘one-size fits all’ model that can succeed in enhancing respect for rights in every society? It is submitted that, there is good reason to suppose that, in developing a model of constitutionalism appropriate for a particular country, the specific socio-political context should be taken into account.<sup>44</sup> That should be an important consideration with respect to constitutionalism in Africa which is predominantly based on Western models transplanted during the colonial era. Those models developed in the West, responded to specific socio-political conditions (among others) and have been consistently adjusted to respond to developments there,<sup>45</sup>

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State’ (2008) 56 *Political Studies* 519, 520-521. See also Jon Elster, ‘Constitutionalism in Eastern Europe: An Introduction’ (1991) 58 *University of Chicago Law Review* 447, 465 on the role of the constitution in defining and protecting rights of citizens and in establishing a machinery for their enforcement.

<sup>42</sup> Walker, ‘Taking Constitutionalism beyond the State’ (n 41) 521.

<sup>43</sup> Robert Barros, *Constitutionalism and Dictatorship: Pinochet, the Junta and the 1980 Constitution* (Cambridge University Press 2004) 18; Larry Catá Backer, ‘From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems’ (2009) 113(3) *Penn State Law Review* 101, 112, 167; Dieter Grimm, ‘The Achievement of Constitutionalism and its Prospects in a Changed World’ in P. Dobner & M. Loughlin (eds) *The Twilight of Constitutionalism* (Oxford University Press 2010) 3.

<sup>44</sup> Ray (n 41) 116; Michael Davis, ‘East Asia after the Crisis: Human Rights, Constitutionalism and State Reform’ (2004) 26(1) *Human Rights Quarterly* 126, 128; NOTE, ‘Counter Insurgency and Constitutional Design’ (2008) 121 *Harvard Law Review* 1622, 1637.

<sup>45</sup> Yash Ghai, ‘The Theory of the State in the Third World’ in Greenberg et al (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993) 190-191; Richard Sklar, ‘On the Study of Constitutional Government in Africa’ in Okon Akiba (ed), *Constitutionalism and*



whereas conditions in colonial and post-colonial Africa have differed significantly from those in the West. The export models appear not to have considered the specific circumstances in the African context (such as its history, underdevelopment, fragile democracies, and ethnic divisions).<sup>46</sup> Indeed, it has been argued that the application of purely Western models without taking cognisance of Africa's peculiar circumstances has limited the potential for constitutionalism to act as a bulwark against arbitrary government action on citizens.<sup>47</sup> Michael Reisman asserts that 'Framers must design a constitution to reflect a country's particular historical and political context'.<sup>48</sup> In recognition of the contextual dimension, Abdullahi An-Na'im, Ali Mazrui and others have argued that the development of constitutionalism in Africa should of necessity engage more with indigenous principles and institutions in order to develop mechanism for the protection and enhancement of CPR that are relevant to those societies and reflect their specific historicity and contemporary dynamics.<sup>49</sup> That should entail adapting and incorporating indigenous principles and institutional mechanisms of governance into modern systems of constitutionalism.

Based on the theoretical underpinnings of constitutionalism as concisely depicted above (a matter to be discussed further in Chapter 1), this thesis thus argues that the problem of systemic violations of CPR in Cameroon can be attributed in part to the predominance of the French colonial legacy in Cameroon's bijural legal system. The French colonial legacy as used here refers to the French civil law constitutional model which was transplanted to Cameroon and its subsequent development and application in the context of Cameroon.<sup>50</sup> That legacy is constitutive of some divisive elements which are unsupportive of constitutionalism as currently understood and as such fails to provide a

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*Society in Africa* (Ashgate 2004) 45; Abdullah A. An-Na'im, *African Constitutionalism and the Role of Islam* (University of Pennsylvania Press 2006) 161-173.

<sup>46</sup> *ibid.*

<sup>47</sup> Ghai (n 45) 190-191; Sklar (n 45) 45; An-Na'im (n 45) 31; Hastings Okoth-Ogendo, 'Constitutions without Constitutionalism' in Greenberg et al (eds) *Constitutionalism and Democracy* (n 45) 65-82.

<sup>48</sup> Michael Reisman, 'Introductory Remarks: Symposium Constitutionalism in the Post-Cold War World' (1994) 19(1) *Yale Law Journal* 189, 191.

<sup>49</sup> An-Na'im (n 45) 31-32; Ali Mazrui, 'Constitutional Change and Cultural Engineering: Africa's Search for New Directions' in Joseph Oloka-Onyango *Constitutionalism in Africa: Creating Opportunities Facing Challenges* (Fountain Publishers 2001) 20-21. See also Sklar (n 45) 46-49; Francis Deng, *Identity, Diversity and Constitutionalism in Africa* (USIP 2008).

<sup>50</sup> For clarity and consistency the reference French colonial legacy will be adopted in this thesis.

framework conducive to the realisation of CPR. The Constitution of Cameroon which is primarily influenced by its French colonial heritage does not sufficiently accord with the standards of a good constitution. The system is based on a deficient separation of powers and checks and balances with potential for excessive and unaccountable executive power. It has developed into a system of over-concentration and personalisation of presidential power creating a condition of imperial presidency often associated with tyranny and oppression, the very conditions which constitutionalism seeks to diffuse. In addition, the judiciary is structured in ways that make it accountable to the executive and in particular the President thus jeopardising its independence which is vital for the protection and enhancement of CPR. These deficiencies are compounded by a restrictive mechanism for judicial review which precludes review of promulgated legislation and prevents ordinary citizens from challenging the constitutionality of oppressive laws.

Not only is the constitutional structure inadequate from a conceptual perspective, it is also ill-suited to the specific context of Cameroon. The country faces certain challenges due to the fact that it is a relatively young country and also due to its difficult transition from a one-party dictatorship to a multiparty democracy. Further, problems emanating from its underdeveloped economy in addition to poverty, health concerns and ethnic divisions place additional expectations on the government. In a country facing such challenges, more robust features of constitutionalism are necessary to ensure that the government remains accountable and refrains from responding to public demands through repressive means.

In the 21<sup>st</sup> Century, when constitutionalism as Michel Rosenfeld asserts ‘has so dramatically soared ... that it seems poised to achieve a worldwide sweep’<sup>51</sup> it is submitted that Cameroon’s constitutional system should be reassessed with a view towards more effectively securing respect for CPR. To attain that objective, this thesis

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<sup>51</sup> Michel Rosenfeld, ‘Modern Constitutionalism as Interplay between Identity and Difference’ in Michel Rosenfeld (ed), *Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives* (Duke University Press 1994) 3. See also Grimm (n 43) 3; Bruce Ackerman, ‘The Rise of World Constitutionalism’ (1997) 83(4) *Virginia Law Review* 771; Richard Kay, ‘American Constitutionalism’ in Larry Alexander (ed) *Constitutionalism: Philosophical Foundations* (Cambridge University Press 1998) 17; Donald Lutz, ‘Thinking about Constitutionalism at the Start of the Twenty-First Century’ (2000) 30(4) *Publius: The Journal of Federalism* 115.

argues for the contextualisation of constitutionalism to reflect the specific circumstances of Cameroon.

Although Cameroon's legal system is widely regarded as bijural<sup>52</sup> it is perhaps fair to assert that the description is inaccurate as indigenous systems of law and governance institutions exist in Cameroon albeit with limited application. It is argued that, developing a contextual approach to constitutionalism should entail taking into account Cameroon's legally pluralistic nature. This implies a departure from the excessive adherence to its French colonial heritage and greater recognition and engagement with the features of its British colonial (constitutional) legacy and indigenous customs and institutions. Since reunification, Cameroon's British colonial legacy has continued to be undermined to the point that it has very minimal influence at the constitutional level. It is perhaps ironic therefore that in post-colonial Africa there is some analytical literature and empirical evidence suggesting that the British colonial legacy is more supportive of constitutionalism than the French.<sup>53</sup> In particular, it has been argued that the British colonial legacy is characterised by a more robust system of checks and balances, buttressed by more entrenched features of judicial independence and a more accessible and holistic mechanism for judicial review of legislation.<sup>54</sup> Based on those propositions, it has been asserted that the combined effect of those normative elements may partly account for the better record of former British colonies in the protection of CPR than former French colonies.<sup>55</sup> That, however, does not imply that former British colonies do not have problems with the protection of CPR. The assertion is that some features of their

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<sup>52</sup> The former Southern Cameroons, administered by Britain, adopted the English common law while the former French Cameroon, administered by France, adopted the French civil law system. After independence, both systems were maintained by virtue of the Federal Constitution 1961, article 46.

<sup>53</sup> Ben O. Nwabueze, *Constitutionalism in the Emergent States* (Hurst Publishers 1973); Frank Moderne, 'Human Rights and Postcolonial Constitutions in Sub-Saharan Africa' in Louis Henkin & Albert Rosenthal (eds), *Constitutionalism and Rights: the Influence of the United States Constitution Abroad* (Columbia University Press 1990); Edward Glaeser and Andrei Shleifer, 'Legal Origins' (2002) *Quarterly Journal of Economics* 1193; Henry F. Carey, 'The Postcolonial State and the Protection of Human Rights' (2002) 22 *Comparative Study of South Asia, Africa & Middle East* 59; Sandra F. Joireman, 'Colonisation and the Rule of Law: Comparing the Effectiveness of Common Law and Civil Law Countries' (2004) 15, *Constitutional Political Economy* 315; Rafael La Porta et al, 'Judicial Checks and Balances' (2004) 112(2) *Journal of Political Economy* 445.

<sup>54</sup> *ibid.*

<sup>55</sup> *ibid.* But cf Linda C. Keith & Ayo Ogundele, 'Legal Systems and Constitutionalism in Sub-Saharan Africa: An Empirical Examination of Colonial Influences on Human Rights' (2007) 29 *Human Rights Quarterly* 1071.

constitutional structure give these countries comparably greater capacity for the protection of rights than the French counterparts. As Rhoda Howard surmises, although Commonwealth countries face CPR challenges just as francophone Africa, the former are not amongst the worst violators in Africa.<sup>56</sup> Given that the British colonial legacy is part of Cameroon's heritage and forms part of the lived experiences of people in Cameroon, it is worth exploring further to incorporate some advantages that inhere in the system.

Like the British colonial legacy, the influence of indigenous principles and institutions that can potentially enhance a contextual development of constitutionalism have been undervalued. Indeed, there has been a decline in appreciation for those indigenous aspects which began in the colonial era. Yet, an examination of some of the indigenous systems reveals positive aspects of traditional leadership and other institutional features or regulatory institutions such as *ekpe* and *nwerong* which can be broadly perceived as autochthonous antecedents of constitutionalism. Such features, as will be argued in Chapter 6, should be given some recognition in developing more robust institutional features for the enhancement of CPR in Cameroon.

From the above it may be apparent that the thesis advanced is that Cameroon's solution to improving its record in the protection and enhancement of CPR may lie plausibly in developing an approach which attempts to synthesise the positive features of constitutionalism inherent in the three existing legal orders. What is envisaged is a framework based on the general principles of constitutionalism but also incorporating indigenous principles and institutions, taking into account the specific contemporary circumstances of Cameroon. The expectation is that such a framework would be more conducive to the realisation of CPR.

Of course, a challenge that immediately arises is that of synthesising constitutional features or precepts from disparate constitutional models. The thesis approaches that

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<sup>56</sup> Rhoda Howard, *Human Rights in Commonwealth Africa* (Rowman & Littlefield 1986) 11. See also Philip Reyntjens, 'The Winds of Change: Political and Constitutional Evolution in Francophone Africa, 1990-1991' (1991) 35(1,2) *Journal of African Law* 1, 54.

challenge by proposing a framework or approach referred to as the Optimal Integrative Approach (OIA). Essentially, OIA advocates for a contextual development of constitutionalism which focuses on prioritising the positive features of each of the relevant systems and demonstrates how they can be mutually supportive in developing the best possible foundation for the realisation of CPR in Cameroon. OIA as discussed in Chapter 6, however, is not presented as a fully developed framework on contextualising constitutionalism. Nevertheless, it is discussed as a necessary prelude to the development of a more comprehensive theoretical framework on the contextualisation of constitutionalism in Cameroon with a view towards enhancing the protection and enhancement of CPR.

#### **4. LIMITATIONS**

It may be helpful at this point to explain the limits of this thesis, first in terms of its scope and secondly, a practical difficulty resulting from limited access to information in Cameroon.

##### **4.1. Scope of Thesis**

This thesis is focused on examining the problem of systemic violations of fundamental CPR in Cameroon. It is not concerned with examining how *all* fundamental rights are protected and enhanced. However, I take the view, along with some notable theoretical perspectives, that CPR are essential to realise all human rights.<sup>57</sup> Consequently, focusing on these rights is a necessary prelude to examining a broader rights promotion.

There is no implication here that other fundamental rights are not important. It is presumed that in Cameroon people are as much concerned with having their basic subsistence conditions improved as they are in having the ability to freely express their discontent for the failure of the government to do so, without being arrested. The

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<sup>57</sup> John Rawls, *Justice as Fairness: A Restatement* (2<sup>nd</sup> ed, Harvard University Press 2001); Allen Buchanan, *Justice, Legitimacy and Self-determination: Moral Foundations for International Law* (Oxford University Press 2004).

February 2008 debacle discussed earlier<sup>58</sup> attests to that presumption. Equally, none of this implies that any lessons learnt from researching on the CPR dimension will have no relevance for socio-economic rights. As the South African Constitutional Court has demonstrated, an independent and empowered judiciary is important for the protection and enhancement of CPR, as well as socio-economic rights.<sup>59</sup>

## **4.2. Access to Information**

One of the major challenges encountered in undertaking this study has been the problem of lack of access to information in Cameroon.<sup>60</sup> This is in part the result of the problem of CPR failings in the country which this thesis examines. For that reason it has been difficult to obtain some relevant and fairly recent cases, legislation and documentation relating to government services. The author made several attempts to contact officials in the relevant services as well as friends and relatives. Government officials contacted through their contact details published on official websites simply did not respond, while some friends and relatives expressed concerns as to their safety. It is a challenge for a person resident in Cameroon to obtain information from public services and even more challenging for a researcher who is not physically present in Cameroon. The source of that problem can be traced to legal and socio-political factors.

From the legal dimension, there is no specific domestic legislation on the right of access to information.<sup>61</sup> The Constitution, however, indirectly guarantees that right through some international conventions that have been ratified by Cameroon.<sup>62</sup> Additionally, the right is implicit in some substantive laws such as the law on freedom of social

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<sup>58</sup> See section 1 above.

<sup>59</sup> Dennis Davis, 'Socio-economic Rights: Has the Promise of Eradicating the Divide between First and Second Generation Rights been Fulfilled?' in Ginsburg & Dixon (eds), *Comparative Constitutional Law* (Edward Elgar Publishing 2011) 519-529.

<sup>60</sup> USDS, '2010 Human Rights Report: Cameroon' (n 1) s 4 at 29; Citizen's Governance Initiative (CGI), 'The Right to Information and Administrative Transparency in Cameroon' (Yaoundé, Imprimerie Saint Paul 2010) <[www.citizens-governance.org/IMG/pdf/Right\\_Access\\_Info\\_Admin\\_Transparency\\_CMV.pdf](http://www.citizens-governance.org/IMG/pdf/Right_Access_Info_Admin_Transparency_CMV.pdf)> accessed 24 January 2012; Sustainable Development Networking Programme (SDNP), 'Cameroon: Bridging the IT Gaps' (UNDP) <[www.undpegov.org/sdnp/stories/cameroon.html](http://www.undpegov.org/sdnp/stories/cameroon.html)> accessed 19 August 2012.

<sup>61</sup> *ibid.*

<sup>62</sup> For instance, the African Charter on Human and Peoples' Rights, art 9(1) which states that 'Every individual shall have the right to receive information'.

communication.<sup>63</sup> Article 49(1) of that law provides that individuals shall be free to have access to official documents except otherwise provided by law. Nevertheless, the absence of a specific law on the subject makes it difficult for an individual to assert that right by demanding access to information. In Cameroon, most government documents are not readily available to the public.<sup>64</sup>

Moreover, despite the provision of the law, the ability to access information depends substantially on the type of information and the officials to whom a request is made.<sup>65</sup> Information which is considered 'sensitive' for political reasons by the government or the official to whom a request is made would usually be unobtainable.<sup>66</sup> Generally, information on government activities is considered confidential and therefore release to the public is the exception rather than the norm.<sup>67</sup> In 2010, in a first ever systemic survey of the right to information in Cameroon, the Citizen's Governance Initiative (CGI) a domestic non-governmental organisation described the greatest socio-political obstacle as being the 'culture of secrecy and disservice'.<sup>68</sup> Government officials tend to consider the release of such 'sensitive' information not in the public interest and do not perceive part of their duty as making information available to the public.<sup>69</sup> Again, officials are apprehensive of reprisal from the executive if 'sensitive' material is released to the public.<sup>70</sup> This latter point makes obtaining information sometimes dependent on personal relationships. A personal relation may dare to release information on the assurance that they will not be identified as the source.<sup>71</sup> Much of the information relevant to the present thesis can be considered sensitive in the Cameroonian context to the extent that it has a significant political implication. There is an implicit assumption here that the above

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<sup>63</sup> Law No. 90/052 on the Freedom of Social Communication (FSC).

<sup>64</sup> USDS, '2010 Human Rights Report: Cameroon' (n 1) s 4 at 29; CGI (n 60) 21-23, 59, 78; SDNP (n 60).

<sup>65</sup> CGI (n 60) 43; SDNP (n 60). I had previously visited the High Court in Fako Division and approached the Registrar of the Court for assistance in accessing its repository. I was fiercely turned down.

<sup>66</sup> CGI (n 60) 43; SDNP (n 60). There is no precise definition of what constitutes sensitive information. However, in the context of Cameroon any aspect which is likely to appear as a challenge or opposition to the government or to discount or discredit the government might fall into that category. See generally Fombad, 'Freedom of Expression in the Cameroonian Democratic Transition' (n 26).

<sup>67</sup> SDNP (n 60).

<sup>68</sup> CGI (n 60) 21, 75. See also SDNP (n 60).

<sup>69</sup> CGI (n 60) 21, 75.

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid.*

factors partly explain why requests for information from various public services in Cameroon were simply ignored.

Other problems included the absence of a systemic programme for the documentation of government information. In the context of the present research, that problem was particularly obvious in attempting to access cases, legislation and information on parliamentary processes. Cases are not generally reported due in part to lack of funding, which makes it difficult for the administrative units of the judiciary to produce hard copies of decisions. Some modest private initiatives have been undertaken to report cases but they appear sporadically and are not widely distributed.<sup>72</sup> With regard to legislation the primary source for legal instruments is the Official Gazette, the availability of which is undermined again by lack of funding and centralisation. Its publication appears infrequently and is mostly available in Yaoundé (the capital city of Cameroon) where it is published.<sup>73</sup>

In addition, there is poor record keeping of available documentation. According to the CGI, that is a systemic problem affecting public institutions in Cameroon. In the absence of a systemic mechanism for documentation, searching for a specific document is a Herculean task.<sup>74</sup> Recently, a number of public services have created websites to enhance transparency and access to information. Although this has attempted to improve on the situation, access to information is still a problem. In addition, some of the websites are either not functional, have dated information<sup>75</sup> or refer to nonexistent links<sup>76</sup> and links with no substantive content.<sup>77</sup>

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<sup>72</sup> Charles M. Fombad, 'Researching Cameroonian Law', (June/July 07) <[www.nyulawglobal.com/globalex/Cameroon.htm](http://www.nyulawglobal.com/globalex/Cameroon.htm)> accessed 13 August 2009.

<sup>73</sup> CGI (n 60) 23, 78.

<sup>74</sup> A previous experience of searching for a decision in the Court of Appeal in the South West Region with the assistance of a most reluctant Registrar proved particularly hopeless. There was no systemic pattern of filing cases so several unsuccessful attempts by the Registrar to search for the requested case made him to conclude that I was taking up his time and he asked me to leave his office.

<sup>75</sup> A notable example is the official website of the National Assembly. The most current legislation published dates back to 2007 and a number of others listed had been repealed or substantially amended. See Assemblée Nationale du Cameroun, 'Les Lois: Adoptée' <[www.assembleenationale.cm/index.php?option=com\\_wrapper&Itemid=88](http://www.assembleenationale.cm/index.php?option=com_wrapper&Itemid=88)> accessed 09 September 2012.



In spite of those difficulties, material from Cameroon relevant to this thesis was obtained with the assistance of personal contacts from the bar, the judiciary, the Ministry of Justice, the School of Administration and Magistracy and law professors from some universities in Cameroon. Where relevant and possible, these sources have been acknowledged.

## **5. THESIS STRUCTURE**

In order to substantiate and explore the thesis already outlined above this work is divided into six chapters and a concluding part. Chapter 1 provides an understanding of constitutionalism influenced by contemporary perspectives on the concept. It also discusses the importance of context in developing a more relevant model suitable to the circumstances in question. The chapter goes further to apply that understanding of constitutionalism to propose a framework of three central constitutional principles against which the development of Cameroon's constitution can be analysed with regard to its record of CPR. These principles consist of, first, the separation of powers and checks and balances (discussed as an integral principle), second, the independence of the judiciary and, third, judicial review. The chapter justifies this demarcation and demonstrates how the framework can serve as an analytical tool to identify the parameters of CPR violation at a systemic level.

Chapter 2 begins that analysis in the particular circumstances of Cameroon by providing a historical background for understanding the origins of the current constitutional framework vis-à-vis CPR. It examines the transplantation of the French civil law system and the British common law system during the colonial period and the relegation of indigenous customs and institutions. Postcolonial constitutional developments from 1960 to 1972 are discussed to demonstrate the constitutional trajectory of Cameroon. An

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<sup>76</sup> Ministry of Communication, 'Documentations et Archives: Textes Législatifs et Réglementaires' <[www.mincom.gov.cm/index.php?info=treg&&rub=rtreg](http://www.mincom.gov.cm/index.php?info=treg&&rub=rtreg)> accessed 13 September 2012. That link appears not to be functional.

<sup>77</sup> Supreme Court of Cameroon, 'Publications de la Cour' <[www.coursupreme.cm/index.php?csc=publications-de-la-cour](http://www.coursupreme.cm/index.php?csc=publications-de-la-cour)> accessed 09 September 2012, no data is provided through that link.

attempt is made to demonstrate how the enforcement of CPR was affected in the course of the developments. The prelude to the adoption of the current 1996 Constitution is also discussed to provide the background for understanding the reasons for its adoption and for analysis in subsequent chapters.

The next three chapters then apply the analytical framework in detail. Chapter 3 analyses presidential power in Cameroon against the backdrop of the principles of separation of powers and checks and balances discussed in Chapter 1. It outlines the constellation of presidential powers and the available mechanisms to regulate their exercise. It will attempt to demonstrate that presidential power is excessive and unaccountable, a situation which provides scope for the arbitrary exercise of power.

Chapter 4 examines the institutional mechanisms for guaranteeing judicial independence in Cameroon. It first provides an understanding of judicial independence, building on the principle as briefly discussed in Chapter 1. The chapter aims to demonstrate that the judiciary is subordinated to the executive and therefore lacks independence. That position undermines the capacity of the judiciary to deal assertively with executive violations of CPR.

Chapter 5 examines the system of judicial review of legislative and administrative acts in Cameroon. It examines the institutional structure, the methods and scope of review of legislation. The overall assessment, as the chapter will attempt to demonstrate, is that it is an inadequate system which leaves the ordinary citizen with no avenue to challenge the constitutionality of a law adversely affecting their exercise of CPR. With regard to administrative review, the chapter highlights the challenges that litigants can encounter in attempting to assert their rights against administrative authorities. In particular, the chapter asserts that the problem of absence of judicial independence discussed in Chapter 4 undermines the effectiveness of administrative review.

Having provided an assessment of the Cameroonian constitutional system and found it wanting with regard to the three core constitutional principles, Chapter 6 then considers

the proposition that an appropriately constructed constitutionalism in Cameroon could be a solution to the problem of enhancing CPR realisation. It reviews existing discourse on contextualising constitutionalism in Africa through the adaptation and incorporation of autochthonous principles and institutions. It also visits the debates on the potentially progressive constitutional features of the British colonial legacy as compared to the French colonial legacy. The chapter introduces the Optimal Integrative Approach and discusses it as a preliminary framework on contextualising constitutionalism in Cameroon by focusing on the positive features inherent in the three legal influences or orders existing in Cameroon. The overall objective is to develop a constitutional framework appropriate for Cameroon to address the CPR problem identified earlier in the thesis.

The thesis ends with a general conclusion which draws together the analyses in the preceding chapters.

## Chapter 1

### Constitutionalism and Fundamental Rights: A Framework for Analysis

#### INTRODUCTION

This chapter examines more closely the concept of constitutionalism and how it can be supportive of CPR. It aims to apply that concept to develop a normative benchmark for assessing, in the first instance, the Constitution of Cameroon and its influence on the protection of CPR. Secondly, the framework will serve as the basis for the development of a contextualised conception of constitutionalism in the latter part of this study.

This chapter is partitioned into three sections. The first explores the concept of constitutionalism and attempts to provide an understanding of that concept as conceived in the present study. In section two, the constitution is explored in relation to its role in constitutionalism. Section three discusses a framework of three central constitutional principles consisting of the separation of powers and checks and balances,<sup>1</sup> judicial independence, and judicial review. An explanation for that demarcation is provided in that section, together with the ways in which the principles can support the protection and enhancement of CPR. It is worth noting that in discussing constitutionalism in this chapter, the author will adopt the term ‘fundamental rights’ to imply civil and political rights.

#### 1. AN UNDERSTANDING OF THE CONCEPT OF CONSTITUTIONALISM

Constitutionalism is essentially a contested concept whose meaning is not self-evident.<sup>2</sup> As such, it has been subjected to a diversity of interpretations and meanings.<sup>3</sup> This

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<sup>1</sup> Although the separation of powers and checks and balances are distinct constitutional principles, they are discussed together in the framework. That is deemed necessary here in order to better capture their usefulness as constitutional principles that can enhance the protection and promotion of fundamental rights.

<sup>2</sup> Louis Henkin, ‘A New Birth of Constitutionalism: Genetic Influences and Genetic Defects’ in Michel Rosenfeld (ed), *Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives* (Duke University Press 1994) 40.

<sup>3</sup> Henkin (n 2) 39-40; Michel Rosenfeld, ‘Modern Constitutionalism as Interplay Between Identity and Diversity’ in Rosenfeld (ed) *Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives* (Duke University Press 1994) 3; Eric Murkens, ‘The Quest for Constitutionalism in the UK

section will very briefly examine two leading perspectives on constitutionalism. From that examination, it will attempt to extrapolate and discuss what appears to be a fairly consensual understanding of contemporary constitutionalism.

The first perspective, which is considered the historical purport of constitutionalism, is that it is concerned with the limitation of governmental power.<sup>4</sup> That view was subsequently contested as it tended to portray constitutionalism simply as concerned with constraining the powers of government.<sup>5</sup> According to Larry Backer, constitutionalism was tied to the idea of limiting government but not to the ends of the limitation.<sup>6</sup> That perspective has evolved to include the need for organisation and control of governmental power to be geared towards the enhancement of good and effective governance objectives.<sup>7</sup> The protection of fundamental rights falls within the purview of good governance<sup>8</sup> and has increasingly become a defining feature of constitutionalism.<sup>9</sup> That was influenced by developments in the international scene after World War II<sup>10</sup> and also after the collapse of communism in 1989.<sup>11</sup> Michel Rosenfeld for one, states that ‘in the broadest terms, modern constitutionalism requires imposing limits on the powers of

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Public Law Discourse’ (2009) 29(3) *Oxford Journal of Legal Studies* 427-455; Nathan Tarcov, ‘Ideas of Constitutionalism, Ancient and Modern’ in Steven Kautz et al (eds), *The Supreme Court and the Idea of Constitutionalism* (University of Pennsylvania Press 2009) 11.

<sup>4</sup> Charles McIlwain, *Constitutionalism: Ancient and Modern* (Cornell University Press 1940) 24.

<sup>5</sup> Larry Backer ‘From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems’ (2009) 113(3) *Penn State Law Review* 101,103, 115.

<sup>6</sup> *ibid.*

<sup>7</sup> Paul Craig, ‘Constitutions, Constitutionalism and the European Union’ (2001) 7(2) *European Law Journal* 125, 126; John Hatchard et al, *Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective* (Cambridge University Press 2004) 7.

<sup>8</sup> World Bank, *Governance and Development* (Washington D.C., 1993); United Nations Development Programme, ‘Governance for Sustainable Human Development’ (UNDP policy document, New York, 1997) < <http://mirror.undp.org/magnet/policy/> > accessed 21 October 2012.

<sup>9</sup> Bellamy, ‘The Political Form of the Constitution: The Separation of Powers, Rights and Representative Democracy’ (1996) 64 *Political Studies* 436, 436; Ming-Sung Kuo, ‘Reconciling Constitutionalism with Power: Towards a Constitutional Nomos of Political Ordering’ (2010) 23(3) *Ratio Juris* 390, 391. See also Issa Shivji, ‘State and Constitutionalism: A New Democratic Perspective’ in Issa Shivji (ed), *State and Constitutionalism: An African Debate on Democracy* (SAPES 1991) 28; Julius Ihonvbere, ‘Towards a New Constitutionalism in Africa’ (2000) *Centre for Democracy and Development Occasional Series Paper No.* 413, 13.

<sup>10</sup> Ruti Teitel, ‘Human Rights Genealogy’ (1997) 66 *Fordham Law Review* 301, 302; Backer, ‘God(s) Over Constitutions: International and Religious Transnational Constitutionalism in the 21<sup>st</sup> Century’ (2008) 27 *Mississippi College Law Review* 101, 114-115.

<sup>11</sup> *ibid.*

government, adherence to the rule of law, and the protection of fundamental rights'.<sup>12</sup> Similarly, Judith Squires takes constitutionalism to comprise two key elements namely the rights provisions which are seen as providing constraints on the political process, and structural provisions for controlling and regulating governmental power.<sup>13</sup>

The second perspective sees constitutionalism as a process through which citizens and governmental powers mediate conflicts and articulate competing interests.<sup>14</sup> It emphasises the role of participation and deliberation in decision making processes. Proponents of this view share a common understanding that mediation of conflicts and articulation of interests should be done through pre-established processes and institutional structures.<sup>15</sup> The processes and institutions are governed by a normative standpoint which serves as a reference point for all participants. The normative standpoint (constitution) will usually prescribe such aspects as the allocation of powers, their method of accountability and the form of participation of various stake holders.<sup>16</sup> According to this perspective, an important objective that decision making processes should seek to achieve is respect for and the protection of fundamental rights.<sup>17</sup>

Both conceptions of constitutionalism appear to be concerned with governmental powers, the exercise of those powers and how citizens interact with governmental powers and institutions to achieve certain objectives, prominent amongst which is the protection of fundamental rights. Indeed, David Feldman asserts that, 'constitutionalism in both senses ... is an essential precondition for the effective protection of human rights'.<sup>18</sup>

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<sup>12</sup> Rosenfeld, 'Modern Constitutionalism as Interplay' (n 3) 3; Rosenfeld, 'The Rule of Law and the Legitimacy of Constitutional Democracy' (2001) 74 *Southern California Law Review* 1307, 1307. See also Henkin (n 2) 40-42.

<sup>13</sup> Judith Squires, 'Liberal Constitutionalism, Identity and Difference' in Bellamy & Castiglione (eds) *Constitutionalism in Transformation: European and Theoretical Perspectives* (Blackwell 1996) 209.

<sup>14</sup> Abdullahi An-Na'im, *African Constitutionalism and the Role of Islam* (University of Pennsylvania Press 2006) 4-5; David Feldman, 'Constitutionalism, Deliberative Democracy and Human Rights' in John Morrison et al (eds) *Judges, Transition and Human Rights* (Oxford University Press 2007) 444-445; Francis Deng, *Identity, Diversity and Constitutionalism in Africa* (USIP 2008) 9-10.

<sup>15</sup> *ibid.*

<sup>16</sup> *ibid.*

<sup>17</sup> An-Na'im, *African Constitutionalism* (n 14) 5; Feldman (n 14) 462; Deng (n 14) 9.

<sup>18</sup> Feldman, (n 14) 462, 464.

Drawing from both perspectives, constitutionalism is perceived in the present thesis as situated at the heart of the relationship between governmental powers *inter se* and citizens, and the extent to which the exercise of those powers enhance the enforcement of fundamental rights. Fundamental rights standards may be embodied in positive law whether by way of bills of rights or general statements in the constitution, some domestic legislation or international instrument to which the country subscribes.<sup>19</sup> Those standards express the rights which a government purports to accord to its citizens from which it should not deviate. However, they are not self-executing. They are enforced in an institutional context whose effectiveness depends in part on the nature of the institutional arrangements within which they operate. Constitutionalism connects with fundamental rights in this way by providing the institutional context within which governments and citizens aspire to achieve the effective enforcement of fundamental rights.

The instrumentality of constitutionalism is conceived here on the basis of two related perspectives - the limiting and the empowering. The limiting perspective is based on the conventional conception of constitutionalism as concerned with the limitation of governmental power.<sup>20</sup> The purpose of that limitation is not to incapacitate government but to protect citizens against the arbitrariness that inheres in the uncontrolled exercise of power. This conception presupposes that there are pre-established rules which clearly define the relationship between citizens and the government and the permissible boundaries within which that relationship is exercised.<sup>21</sup> For instance a constitutional provision for the right to personal liberty requires that executive officials should not arbitrarily arrest or detain citizens. It also suggests that subordinate legislation, which regulates personal liberty, should be formulated in such a way as to prevent arbitrariness in its enforcement.

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<sup>19</sup> Jeremy Waldron, 'Constitutionalism - A Skeptical View' in Thomas Christiano and John Christman (eds), *Contemporary Debates in Political Philosophy* (Blackwell Publishers 2009) 272.

<sup>20</sup> McIlwain (n 4) 24.

<sup>21</sup> Robert Barros, *Constitutionalism and Dictatorship: Pinochet, the Junta and the 1980 Constitution* (Cambridge University Press 2004) 18; Charles Fombad, 'Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa' (2007) 55(1) *American Journal of Comparative Law* 1, 9.

On the other hand, the empowering perspective perceives constitutionalism not simply as a mechanism for limiting governmental power, but also as providing government and citizens with the capacity to implement and exercise fundamental rights standards. It connects with the perspective of constitutionalism as a process, in terms of its preoccupation with the way governmental institutions and citizens interact to enhance the realisation of fundamental rights. The empowering perspective deals not only with the structural division of government authority, but also with the manner in which institutional structures are imbued with the capacity to facilitate the exercise of fundamental rights. For instance, a constitutional guarantee of a democratic right such as the right to vote presupposes a duty on the state to ensure the integrity of the electoral process.<sup>22</sup> It entails the need for institutions to provide avenues for participation in free and fair elections. It also entails that the law establishing such institutions should take into consideration their ability to meet the democratic aspirations of society. Empowering governments in this way potentially opens up avenues through which citizens can more readily exercise their rights. A well functioning electoral system, with regular, free and fair elections has the potential to provide citizens with the power to oust a corrupt or unaccountable government or legislative or elected executive officials who fail to articulate or promote the fundamental rights aspirations of the population.

Jeremy Waldron asserts that although the empowering dimension is less articulated, it adds to the limiting dimension to provide a more comprehensive and constructive way of understanding constitutionalism.<sup>23</sup> According to Waldron, the widespread view of constitutionalism as primarily concerned with limiting or constraining government has a more profound implication which goes beyond preventing the arbitrary use of power.<sup>24</sup> It may also imply that government is restricted in its ability to provide conditions necessary for the effective implementation of rights.<sup>25</sup> If constitutionalism is concerned only with limiting government, then, 'many of the aspirations of government – particularly

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<sup>22</sup> Waldron, 'Constitutionalism - A Skeptical View' (n 19) 272.

<sup>23</sup> *ibid* 279.

<sup>24</sup> *ibid* 272.

<sup>25</sup> *ibid*.



democratic government – are *per se* illegitimate’.<sup>26</sup> The empowering perspective provides that legitimacy and the ability to steer government action towards the achievement of its fundamental rights objectives. As Francis Deng notes, modern constitutionalism entails ‘more positive action to promote human dignity to the fullest possible extent’.<sup>27</sup> The empowering perspective being advocated here is not limited to the positive obligation of the government to provide social and economic rights or the conditions for their realisation. The negative obligation of the government to desist from violating fundamental rights has a positive implication which complements the former by ensuring that the procedural and institutional framework within which power is exercised allows the institutions to perform the specific responsibilities they are vested with. For instance, the judiciary as an institutional component of the governmental framework for implementing fundamental rights requires it to be sufficiently vested with power and autonomy to exercise its functions effectively.<sup>28</sup> Constitutionalism so conceived can enhance the state’s obligation to provide those minimum prerequisites for the proper functioning of a judiciary. Michael Davis notes that by shifting the focus away from negative constitutionalism, attention can be paid to the empowerment conception and the way it provides the basis for thinking of new practices and possibilities for orderly decision making.<sup>29</sup>

Besides limiting and empowering governmental institutions, contemporary constitutionalism is also associated with constitutions. That relationship is considered below.

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<sup>26</sup> *ibid.*

<sup>27</sup> Deng (n 14) 13. See also Abdullahi An-Na’im, ‘The National Question: Secession and Constitutionalism: The Mediation of Competing Claims to Self-Determination’ in Douglas Greenberg et al (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993) 106-107.

<sup>28</sup> Waldron, ‘Constitutionalism - A Skeptical View’ (n 19) 272-277.

<sup>29</sup> Michael Davis, ‘East Asia After the Crisis: Human Rights, Constitutionalism and State Reform’ (2004) 26(1) *Human Rights Quarterly* 126, 139-140.

## 2. CONSTITUTIONS AND CONSTITUTIONALISM

The quest for an ideal constitution has been embraced as fundamental to an understanding of constitutionalism as it is the basic document which structures the relationship between governmental powers *inter se* and government's relationship with citizens for the realisation of fundamental rights.<sup>30</sup> Constitutions establish governmental institutions, confer powers on them and establish the limits of legitimate governmental action. In addition to structural elements, constitutions contain basic values and commitments, fundamental rights aspirations and the method of enforcing their provisions.<sup>31</sup> They also act as a higher law to which other laws must conform.<sup>32</sup> Given those significant functions, the provisions of a constitution are entrenched against frequent and easy amendments.<sup>33</sup> From a constitutionalism perspective, a constitution should contain at least two parts to it; the rights provisions and enforcement mechanism.<sup>34</sup> Additionally, it is submitted that in establishing the enforcement machinery, the specific circumstances of the context in which the constitution is to be applied should be taken into account. These points are considered below in turn.

### 2.1. The Rights Provisions

The rights provisions in a constitution are important because they impose obligations on the government with regard to their citizens and act as limitation on the exercise of public power.<sup>35</sup> They also give citizens an idea of the claims they have and can assert against

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<sup>30</sup> Kuo (n 9) 391. See also Rosenfeld, 'Modern Constitutionalism' (n 3) 14; Frank Michelman describes constitutions as 'regulatory laws of a special kind, setting terms and conditions for the making and execution of all other laws'. Michelman, 'The Constitution, Social Rights and Liberal Political Justification' (2003) 1(1) *International Journal of Constitutional Law* 13, 14.

<sup>31</sup> Dario Castiglione, 'The Political Theory of the Constitution' in Richard Bellamy & Dario Castiglione (eds) *Constitutionalism in Transformation: European and Theoretical Perspectives* (Blackwell Publishers 1996) 9-10; Joseph Raz, 'On the Authority and Interpretation of Constitutions: Some Preliminaries' in Larry Alexander (ed), *Constitutionalism: Philosophical Foundations* (Cambridge University Press 1998) 153-154; Ruth Gavison, 'What belongs in a Constitution' (2002) *Constitutional Political Economy* 90, 90.

<sup>32</sup> Castiglione (n 31) 20.

<sup>33</sup> Raz, 'On the Authority and Interpretation of Constitutions' (n 31) 153.

<sup>34</sup> Jon Elster, 'Constitutionalism in Eastern Europe: An Introduction' (1991) 58 *University of Chicago Law Review* 447, 465; S. N. Ray, *Modern Comparative Politics: Approaches, Methods and Issues* (Princeton-Hall of India Press 1999) 111-112.

<sup>35</sup> Walter Murphy, 'Constitutions, Constitutionalism and Democracy' in Greenberg et al (eds) (n 27) 8-9.

their governments and the basis to assess governmental action in relation to the provision of those claims.<sup>36</sup>

The development of constitutionalism after World War II was characterised by an increased focus on fundamental rights and the proliferation of constitutions as the instrument for their articulation.<sup>37</sup> The focus on fundamental rights was partly in response to the Nazi holocaust and the desire to rid the world of atrocities on humanity.<sup>38</sup> The normative foundations were initially laid down by the United Nations Charter, the Universal Declaration and subsequent U.N. instruments (ICCPR and ICESCR).<sup>39</sup> Those developments also had an impact on states' approaches to the recognition and expression of fundamental rights. Constitutions became an instrumental means of expressing a state's commitment, with most drawing from or reflecting the international normative standards.<sup>40</sup> The post war German Constitution (Basic Law), one of the precursors to the spate of new constitution drafting, gave pre-eminence to fundamental rights.<sup>41</sup> The very first chapter is comprised of nineteen articles enumerating a plethora of fundamental rights including, human dignity, individual liberty, and equality, freedoms of speech, religion and assembly.<sup>42</sup> Elsewhere, some countries emerging from colonialism were bequeathed with constitutions recognising fundamental rights,<sup>43</sup> predominantly CPR (as was the case with former British colonies).<sup>44</sup>

The significance of constitutions has continued to increase particularly after the end of the Cold War in 1989. The subsequent democratic transitions that occurred in sub-Saharan Africa and Eastern Europe were marked by a flurry of new constitutions

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<sup>36</sup> Dieter Grimm, 'Integration by Constitution' (2005) 3(2-3) *International Journal of Constitutional Law* 193, 194-195.

<sup>37</sup> Backer, 'God(s) Over Constitutions' (n 10) 114-115; Teitel (n 10) 302; Thomas Buergenthal, 'The Human Rights Revolution' (1991) 23 *St Mary's Law Journal* 3, 4.

<sup>38</sup> Buergenthal (n 37) 4.

<sup>39</sup> Backer, 'God(s) Over Constitutions' (n 10) 114-115; Teitel (n 10) 302; Buergenthal (n 37) 4.

<sup>40</sup> Backer, 'God(s) Over Constitutions' (n 10) 103, 115.

<sup>41</sup> *ibid* 115-121.

<sup>42</sup> Basic Law for the Federal Republic of Germany (Grundgesetz, GG) 1949. Available at <[www.iuscomp.org/gla/statutes/GG.htm](http://www.iuscomp.org/gla/statutes/GG.htm)> accessed 30 October 2012.

<sup>43</sup> Backer, 'From Constitutions to Constitutionalism' (n 5) 127-128.

<sup>44</sup> See for instance the Southern Cameroons (Constitution) Order in Council discussed below in ch 2.

expressing commitment to fundamental rights.<sup>45</sup> In sub-Saharan Africa some francophone countries which had previously listed fundamental rights in non-justiciable preambles now had entrenched provisions.<sup>46</sup> The Constitution of South Africa by far the most celebrated<sup>47</sup> incorporates a Bill of Rights recognising CPR and the justiciability of socio-economic rights.<sup>48</sup> In Eastern Europe, one of the distinguishing features of some post-communist constitutions was the incorporation or recognition of CPR which had previously been underemphasised in comparison to socioeconomic rights.<sup>49</sup> The Constitution of Poland for instance recognises CPR such as equality, freedom of assembly, speech and expression.<sup>50</sup>

Although constitutional guarantees of fundamental rights provide an idea of what rights are available in a country, their effective realisation depends in part on the existence of an efficient mechanism for their enforcement.

## **2.2. The Enforcement Mechanism**

Establishing an effective mechanism of government is an essential pre-requisite as constitutions provide the framework but cannot predict exactly how in practice governments will operate within it.<sup>51</sup> This has been one of the major concerns with some constitutions which have failed to adequately limit governmental arbitrariness prompting

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<sup>45</sup> See for instance, Constitution of the Republic of Ghana 1992, Chapter 5 on Fundamental Human Rights and Freedoms. Available at <[www.judicial.gov.gh/constitution/second\\_schedule/home.htm](http://www.judicial.gov.gh/constitution/second_schedule/home.htm)> (accessed 30 October 2012); Constitution of the Federal Republic of Nigeria 1999, Chapter IV on Fundamental Rights. Available at <[www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm](http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm)> accessed 30 October 2012.

<sup>46</sup> A notable example is the Constitution of Benin which incorporates a bill of rights. See Constitution of the Republic of Benin 1990, Title II, arts 7-40 on the Rights and Duties of the Individual. Available at <[www.wipo.int/wipolex/en/text.jsp?file\\_id=195505](http://www.wipo.int/wipolex/en/text.jsp?file_id=195505)> accessed 30 October 2012.

<sup>47</sup> Upendra Baxi, 'Constitutionalism as a Site of State Formative Practices' (2000) 21 *Cardozo Law Review* 1183, 1206-1207.

<sup>48</sup> Constitution of the Republic of South Africa No. 108 of 1996, Chapter 2 on the Bill of Rights. Available at <[www.info.gov.za/documents/constitution/1996/a108-96.pdf](http://www.info.gov.za/documents/constitution/1996/a108-96.pdf)> accessed 30 October 2012.

<sup>49</sup> Wiktor Osiatynski, 'Rights in New Constitutions of East Central Europe' (1994-1995) 26 *Columbia Human Rights Law Review* 111, 112. Osiatynski asserts that constitutional provisions for CPR were merely declarations without enforcement mechanisms.

<sup>50</sup> Constitution of the Republic of Poland 1997, Chapter II on the Freedoms, Rights and Obligations of Persons and Citizens. Available at <[www.wipo.int/wipolex/en/text.jsp?file\\_id=194980](http://www.wipo.int/wipolex/en/text.jsp?file_id=194980)> accessed 30 October 2012.

<sup>51</sup> Gavison (n 31) 90-91.

sceptics to regard constitutions as mere window dressing which does not reflect a state's actual practices or commitment to the tenets of limited government and enforcement of fundamental rights.<sup>52</sup> Such constitutions as classified by Karl Loewenstein are either nominal or semantic.<sup>53</sup> A nominal constitution is one which on paper upholds the values of limited government and democracy but is ineffective and therefore only a constitution in name.<sup>54</sup> On the other hand, semantic constitutions serve to formalise the existing locus of power for the benefit of those exercising it.<sup>55</sup> Such constitutions serve as smokescreens which may appear to express the virtues of limited government and fundamental rights but in the absence of effective mechanisms for their implementation, political leaders may use them to pursue unconstitutional ends.<sup>56</sup>

To pre-empt such negative instrumental functions of a constitution, effective mechanisms need to be developed for the legitimate exercise of power which in turn provides scope for the exercise of fundamental rights.<sup>57</sup> Lowenstein notes that 'the ethos of any constitution in the ontological sense must be seen in the articulation of devices for the limitation and control of political power'.<sup>58</sup> In the absence of robust machinery the commitments in the constitution will remain under-enforced or worse, be violated by the institutions that should ensure their protection and enhancement. So, a constitution should provide an effective governmental mechanism where, for instance, powers are separated to the extent necessary to prevent usurpation of power by one governmental organ. Additionally, it should allow necessary scope for mutual cooperation which is vital for the empowerment of various government organs with a view towards the effective protection and promotion of fundamental rights. Moreover, the incorporation of a checks

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<sup>52</sup> Louis Henkin, *Constitutionalism, Democracy and Foreign Affairs* (Columbia University Press 1990) and the same author in 'A New Birth of Constitutionalism' (n 2) 41; Nelson Wiseman, 'The Questionable Relevance of the Constitution in Advancing Minority Cultural Rights in Manitoba' (1992) 25 *Canadian Journal of Political Science*, 697-721.

<sup>53</sup> Karl Lowenstein, *Political Power and the Governmental Process* (University of Chicago Press 1965) 152-155 cited in Ray (n 34) 111. See also Barros (n 21) 15.

<sup>54</sup> Barros (n 21) 15.

<sup>55</sup> *ibid.*

<sup>56</sup> Ray (n 34) 113.

<sup>57</sup> *ibid.* 111. See also Gavison (n 31) 91; Stanley De Smith, *The Commonwealth and its Constitutions* (Stevens & Sons 1964) 106.

<sup>58</sup> Lowenstein (n 53) cited in Ray (n 34) 111.

and balances system is essential for ensuring the accountability of government organs for their actions or inaction which either enhance or undermine fundamental rights.

### 2.3. The Context

Context as used here refers to a geographical setting and the specific circumstances such as historical, social, economic, political and legal that characterise that setting. As stated earlier the issue of context is one that permeates discourse on the adaptability of Western constitutional models transplanted to foreign jurisdictions. Western constitutionalism developed in response to specific socio-economic, political and historical conditions which were consolidated and reinforced by their specific constitutions.<sup>59</sup> As such, the divergent approaches adopted by major Western democracies such as France, Britain and the U.S.A. although mirroring the fundamental tenets of constitutionalism, are tailored to the specific circumstances and political traditions of those societies.<sup>60</sup> Given their developmental peculiarities, it is questionable that those models transplanted abroad can succeed under dissimilar circumstances. Michael Reisman asserts that the experiences of Latin America and Africa with Western constitutions of the 18<sup>th</sup> century demonstrate that constitutions cannot ‘simply be copied on the assumption that they will miraculously transform a political system into a constitutional democracy’.<sup>61</sup>

In Africa, Western constitutional models were transplanted at a time when Africa was emerging from colonialism with weak and sometimes non-existent democratic institutional structures relevant to support constitutionalism. There were also economic and social problems such as underdevelopment, poverty, ethnic divisions all of which can adversely affect the smooth functioning of institutional structures particularly in nascent states such as they were. The transplanted models did not reflect the fact that in addition to the fundamental tenets, the mechanisms transplanted needed some relevance to the

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<sup>59</sup> An-Na'im, *African Constitutionalism* (n 14) 31, 161-173; Yash Ghai, 'The Theory of the State in the Third World and the Problematics of Constitutionalism' in Greenburg et al (eds) (n 27) 190-191.

<sup>60</sup> An -Na'im, *African Constitutionalism* (n 14) 161-173.

<sup>61</sup> Michael Reisman, 'Introductory Remarks: Symposium Constitutionalism in the Post-Cold War World' (1994) 19(1) *Yale Law Journal* 189, 191.

specific post-colonial contexts.<sup>62</sup> It has been argued that, that omission led to the establishment of weak constitutional restraint mechanisms that were exploited by some African leaders to pursue their political ambitions which in many cases involved the violation of fundamental rights.<sup>63</sup>

It is submitted that context should be considered relevant because the principles underlying constitutionalism, although discussed in abstract, are applied within specific contexts. Constitutionalism is a dynamic rather than a rigid concept.<sup>64</sup> It espouses general principles and presuppositions which should guide the establishment of institutional and procedural mechanisms for the protection and enhancement of fundamental rights. Beyond the matters of principle, it may become difficult to be prescriptive on the specific form of institutional and procedural arrangements that should apply at all times and in every place. As a dynamic process, constitutionalism should respond to or reflect the specific circumstances in which constitutional arrangements are to apply as those circumstances are likely to determine the consolidation or decline of constitutionalism.<sup>65</sup> Identifying a parliamentary system as a model of governance in country A may be suitable for that country but the same may not apply to country B particularly where the specific circumstances of country B may require a more functional and institutional separation of powers to allow for the effective protection of fundamental rights. Davis argues with respect to historical context that concerns about past experiences ‘may fundamentally shape new democratic regimes, creating primary imperatives that in other systems may be less important’.<sup>66</sup> The South African Constitution is illustrative. A distinct feature of its society prior to the democratic transition in the 1990s was the apartheid system based on racial discrimination. That influenced the democratic transition and the pre-eminence that has been accorded to matters of equality, freedom

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<sup>62</sup> An-Na'im, *African Constitutionalism* (n 14) 31; Richard Sklar, 'On the Study of Constitutional Government' in Okon Akiba (ed), *Constitutionalism and Society in Africa* (Ashgate 2004)45; Hastings Okoth-Ogendo, 'Constitutions without Constitutionalism' in Greenburg et al (eds) (n 27) 65-82; Ghai, 'The Theory of the State' (n 59) 190-191.

<sup>63</sup> Okoth-Ogendo, 'Constitutions without Constitutionalism' (n 62) 72-73.

<sup>64</sup> Greenberg et al, 'Introduction' in Greenberg et al (eds) (n 27) xix-xx.

<sup>65</sup> Ray (n 34) 116; Davis (n 29) 128; NOTE, 'Counter Insurgency and Constitutional Design' (2008) 121 *Harvard Law Review* 1622, 1637.

<sup>66</sup> Davis (n 29) 148.

and social justice. The Preamble to the 1996 Constitution states one of its purposes as to 'Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental rights'. Section 7(1) further endorses those commitments by providing that the Bill of Rights enshrines the rights to all people in South Africa and affirms the democratic values of human dignity, equality and freedom. The establishment of some institutional features to enforce those commitments has been shaped by its history and also reflects contemporary dynamics of ethnic diversity.<sup>67</sup>

The idea of context here is not to imply a variation of the fundamental tenets of constitutionalism. Rather, it is the form in which they are articulated, but always within the framework of the fundamental tenets.<sup>68</sup> Taking context into account can have a pre-emptive effect on the adoption of institutional structures which can potentially be problematic for the recipient society. As Louis Henkin has noted Western constitutional models 'may have carried with them some inherent deficiencies' which, in the absence of adaptation may affect the development of constitutionalism in 'newly developing constitutional systems'.<sup>69</sup> As will be discussed further in Chapter 6, in Africa, the dissatisfaction with Western constitutional models is partly what is driving the 'search for autochthonous principles of constitutionalism', an ideology espoused by some scholars of constitutionalism in that continent who assert that indigenous principles can be used to complement Western elements of constitutionalism.<sup>70</sup> In that way, African constitutions can develop models of constitutionalism which are robust and reflective of their individual circumstances and by so doing engender better prospects for the realisation of fundamental rights in their specific countries.

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<sup>67</sup> For instance s 174(2) of the Constitution states that 'The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed'. See also Eghosa Osaghae, 'Ethnicity, the State, and Constitutionalism in Africa: Preliminary Observations' in Okon Akiba (ed), *Constitutionalism and Society in Africa* (Ashgate 2004) 99.

<sup>68</sup> Davis (n 29) 146, expresses a similar view asserting that indigenisation should not imply substituting constitutional fundamentals.

<sup>69</sup> Henkin, 'A New Birth of Constitutionalism' (n 2) 39.

<sup>70</sup> An-Na'im, *African Constitutionalism* (n 14) 31-32; Ali Mazrui, 'Constitutional Change and Cultural Engineering: Africa's Search for New Directions' in Joseph Oloka-Onyango *Constitutionalism in Africa: Creating Opportunities Facing Challenges* (Fountain Dimension Publishers 2001) 20-21; Okoth-Ogendo, 'Constitutionalism without Constitutions: The Challenge of Reconstruction of the State in Africa' in Carla Zoethout et al (eds) *Constitutionalism in Africa: A Quest for Autochthonous Principles* (Sanders Institute: GQ-D 1996) 49-62.



### 3. CONSTITUTIONALISM AND FUNDAMENTAL RIGHTS: A FRAMEWORK FOR ANALYSIS

Having presented a plausible understanding of constitutionalism above, this section applies that understanding to develop a framework which will serve as a benchmark for assessing the Constitution of Cameroon and its influence on the protection and enhancement of CPR. It will also serve as a foundation on which to develop a contextual approach to constitutionalism in Cameroon. The framework applies the principles of separation of powers and checks and balances (1), judicial independence (2) and judicial review (3), which together constitute institutional mechanisms through which constitutionalism can be seen as providing a more conducive framework for the realisation of fundamental CPR. As my analysis above shows, respect for fundamental rights and constitutions are intertwined.

As mentioned earlier there are competing views on the various principles or elements of constitutionalism and the mechanism through which constitutionalism empowers and limits governmental actions.<sup>71</sup> Other concepts associated with constitutionalism include the rule of law,<sup>72</sup> democracy<sup>73</sup> and control of constitutional amendments.<sup>74</sup> They are considered integral to the concept of constitutionalism as understood here and have been captured in various forms under the proposed framework. For instance, the rule of law is the primary basis for the institutional arrangements to limit governmental power.<sup>75</sup> In

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<sup>71</sup> Upendra Baxi notes that constitutionalism provides contested sites for ideas and practices on justice, rights, development and individual autonomy. Upendra Baxi, 'Postcolonial Legality' in Henry Schwartz and Sangeeta Roy (eds), *A Companion to Post Colonial Studies* (Blackwell 2000) 540. See also Baker, 'From Constitutions to Constitutionalism' (n 5) 112.

<sup>72</sup> Feldman (n 14) 444, 462.

<sup>73</sup> See for instance Henkin, 'A New Birth of Constitutionalism' (n 2) 40-42; Rosenfeld, 'Modern Constitutionalism as Interplay' (n 3) 3; Baker, 'From Constitutions to Constitutionalism' (n 5) 165; Ihonvbere (n 9) 13; Shivji (n 9) 28, Murphy (n 35) 3-6.

<sup>74</sup> Fombad, 'Challenges to Constitutionalism' (n 21) 8; Jeffrey Goldsworthy, 'Questioning the Migration of Constitutional Ideas: Rights Constitutionalism and the Limits of Convergence' in Sujit Choudhry (ed), *The Migration of Constitutional Ideas* (Cambridge University Press 2007) 116.

<sup>75</sup> Rosenfeld, 'Modern Constitutionalism' (n 3) 3-4; Rhoda Howard, 'Legitimacy and Class Rule in Commonwealth Africa: Constitutionalism and the Rule of Law' (1985) 7(2) *Third World Quarterly* 323, 323; Samuel Huntington, *The Clash of Civilisations and the Remaking of World Order* (Simon & Schuster 1996) 70; Randal Peerenbom, 'Human Rights and the Rule of Law. What's the Relationship?' Public Law and Legal Theory Research Paper No. 0531, 4-5 <<http://ssrn.com/abstract=816024>> accessed 18 March 2011.

both its substantive and procedural conceptions, it is captured in the idea of government by pre-established and clearly defined standards - in the present instance, fundamental rights standards (endorsed by the separation of powers and checks and balances; judicial independence; and judicial review).<sup>76</sup>

Similarly, democracy can be considered as inextricably linked to constitutionalism<sup>77</sup> given that democracy and the rights intrinsic to the democratic process are considered fundamental.<sup>78</sup> According to Neil Walker, constitutionalism functions to realise democracy.<sup>79</sup> The constitution in establishing the standards for the exercise of governmental power incorporates the rules that govern democracy and democratic participation. The elements of the current framework are deemed to operate collectively to prevent constraints on democracy and allow the democratic process to flourish. As such, citizens can exercise their rights of participation and also use the democratic process to assert other fundamental rights.

Granted, it is not always clear which of the two concepts precedes the other. For on the one hand, for democracy to exist first and foremost, people have to decide what form it should adopt. While on the other hand, the decision making process depends on the existence of institutions and normative principles guiding the process of participation and decision making. Moreover, once a democratic structure is established, its survival depends on the existence of the relevant institutions and mechanisms. The process model and empowerment potential of constitutionalism are particularly useful at the decision making stage. They regulate the processes and institutions through which people articulate their differing interests and how decisions are arrived at and their methods of implementation. The limiting dimension regulates subsequent exercise of powers to ensure that it is done within the limits of the agreed parameters. While constitutionalism

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<sup>76</sup> Jeffrey Goldsworthy asserts that many of the principles associated with the rule of law include guarantees of individual rights and an independent judiciary with authority to enforce constitutional requirements and individual rights. See Goldsworthy (n 74) 116.

<sup>77</sup> Feldman (n 14) 450; Murphy (n 35) 3, 6; Neil Walker, 'Constitutionalism and the Incompleteness of Democracy: An Iterative Relationship' (2010) 39(3) *Netherlands Journal of Legal Policy* 206.

<sup>78</sup> Baker, 'From Constitutions to Constitutionalism' (n 5) 128; Julio Faundez, 'Constitutionalism: A Timely Revival' in Greenberg et al (eds) (n 27) 359.

<sup>79</sup> Walker, 'Constitutionalism and the Incompleteness of Democracy' (n 77) 220.

promotes democracy in those ways, it is also relevant that people continue to have the capacity to articulate their interests and demand that their governing institutions or representatives remain accountable.

Democracy and constitutionalism are inseparable for, as Julio Faundez notes, ‘the task of creating stable and efficient institutions ... should not be seen as separate from the struggle for democracy. The choice and design of state institutions are not technical decisions without relevance for democracy’.<sup>80</sup> As will become evident in the case of Cameroon, although the Constitution provides for democratic features and rights intrinsic to the democratic process, their survival is undermined by the inadequacy of the relevant constitutional structures.

With regard to the control of constitutional amendments, the method developed to that effect is relevant to the supremacy of the constitution. Given the constitution’s primary importance to constitutionalism, it is necessary that its durability and stability are assured through more stringent mechanisms for its amendment than ordinary law. Nevertheless, given that it deals with the allocation of power, it can be considered as embedded in the broader principles of separation of powers and checks and balances to the extent that the control of constitutional amendments limits governmental powers to prevent abuse of the constitution.<sup>81</sup>

Thus while the framework proposed here may initially appear minimalist, it is in fact integrative and attempts to represent the core elements that associate constitutionalism with better standards for the realisation of fundamental rights. A focus on the proceeding three principles is an attempt to show that they are basic elements which should ideally be found in any constitutional system without however discounting the contextual dimension in institutional design. The framework is discussed below.

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<sup>80</sup> Faundez (n 78) 359. See also Walker, ‘Constitutionalism and the Incompleteness of Democracy’ (n 77) 220.

<sup>81</sup> Jon Elster asserts that, ‘The procedures for revising the constitution are closely connected with the general spirit of constitutionalism’. Elster (n 34) 470.

### **3.1. The Separation of Powers and Checks and Balances**

An essential feature of constitutionalism, as seen above, is the institutional context within which fundamental rights are enforced or protected. It requires that in practice, the constitutional arrangements to that effect have the capacity to impose limits on governmental action to prevent the violation of fundamental rights and also to empower those institutions with the capacity to promote the same. The separation of powers and checks and balances are interrelated principles which are seen here as having the potential to enhance the realisation of those objectives. This subsection first outlines those two principles and their implications for fundamental rights and then discusses some relevant aspects related to institutional design.

#### ***3.1.1. The Principles and their Implications for Fundamental Rights***

The separation of powers in its pure formulation requires a separation of the three governmental powers - executive, legislative and judiciary. Separation is conceived as both functional and institutional implying that each institution is vested with a separate function and staffed by personnel without overlapping functions.<sup>82</sup> The importance of that separation lies in the fact that each institution performs the functions vested in it by the constitution.<sup>83</sup> In that way authority is dispersed thereby reducing the incidence of over-concentration of powers in one institution which might otherwise lead to a situation where one institution exercises substantial control over major aspects relating to fundamental rights. For instance, an executive wielding legislative power would be able to enact laws which it can enforce in a specific way to undermine fundamental rights. The underlying idea in the separation of powers is to prevent such arbitrariness.<sup>84</sup>

As Montesquieu noted, liberty could not be secured under a system where executive and legislative functions were vested in the same institution, in particular where judicial

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<sup>82</sup> Maurice Vile, *Constitutionalism and the Separation of Powers* (Clarendon Press 1967) 13.

<sup>83</sup> *ibid.*

<sup>84</sup> Walker, 'Taking Constitutionalism beyond the State' (2008) 56 *Political Studies* 519, 521; Bellamy, 'The Political Form of the Constitution' (n 9) 438, 447.

power was united to either the executive or the legislative body.<sup>85</sup> An even more dangerous prospect was uniting all three functions in one body, which he regarded as outright despotism.<sup>86</sup> In such a situation the executive enacts fundamental rights legislation, enforces it and adjudicates disputes between citizens and the government arising from its enactment of that legislation or its application.

Admittedly, a pure separation of powers may be practically impossible.<sup>87</sup> More effective governance may require some form of interaction between these institutions thereby overriding a complete separation of functions.<sup>88</sup> Montesquieu and Locke acknowledged the necessity for some form of cooperation, for instance, the executive's exercise of prerogative powers to deal with emergency situations.<sup>89</sup> Moreover a pure separation in itself does not pre-empt the arbitrary use of power.<sup>90</sup> For it to effectively pre-empt arbitrariness it should be complemented by a checks and balances system, which allows for interdependence of governmental institutions and yet creates a network through which the institutions can exercise mutual accountability.<sup>91</sup> An effective checks and balances system is predicated upon the degree of interdependence between each institution and the extent to which they are empowered to exercise mutual oversight or to resist undue incursions on their authority.<sup>92</sup> It is designed to operate in a way that the executive is able to exercise control over the legislature through, for instance, a power to veto legislation.<sup>93</sup> The legislature on its part can check the executive through a motion of censure, vote of no confidence, oversight commissions or impeachment.<sup>94</sup> The judiciary is seen as a neutral arbiter empowered under a checks and balances system to perform oversight over both the executive and the legislature.<sup>95</sup>

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<sup>85</sup> Montesquieu, *De L'Esprit des Lois*, Book XI, Chapter 6 (Éditions Garnier 1956) 294.

<sup>86</sup> *ibid* 295.

<sup>87</sup> Vile (n 82) 13-14; Bellamy, 'The Political Form of the Constitution' (n 9) 447-449.

<sup>88</sup> Bellamy, 'The Political Form of the Constitution' (n 9) 447-449.

<sup>89</sup> John Locke, *Two Treatise of Government* (Peter Laslett ed, Cambridge University Press 1991) 159-160; Montesquieu (n 85) 299-300. See also Bellamy, 'The Political Form of the Constitution' (n 9) 447-449.

<sup>90</sup> Barros (n 21) xi.

<sup>91</sup> Rose-Ackerman, Desierto & Volosin, 'Hyper-Presidentialism: Separation of Powers without Checks and Balances in Argentina and Philippines' (2001) 29(1) *Berkeley Journal of International Law* 246, 248.

<sup>92</sup> Vile (n 82) 13-18.

<sup>93</sup> Bellamy, 'The Political Form of the Constitution' (n 9) 444-445.

<sup>94</sup> *ibid*.

<sup>95</sup> *ibid* 447.

The checks and balances system complements separation of powers and can create scope for the protection of liberties by subjecting the executive to the rule of law. The principle operates to ensure that the legislature enacts laws which the executive must adhere to in law enforcement. The judiciary further consolidates government's adherence to the rule of law by having the power to strike out government action which violates established standards.<sup>96</sup> Again, the judiciary performs oversight on the legislature through judicial review of legislation to ensure that laws relating to fundamental rights do not unduly circumscribe the same rights they intend to guarantee.<sup>97</sup>

In addition to the aim of preventing governmental arbitrariness, both principles entail the empowerment of governmental institutions for the purpose of enhancing fundamental rights. The latter proposition can be substantiated through the efficiency aim of separation of powers and checks and balances. It presupposes that governmental institutions are provided with the necessary power and autonomy to effectively carry out their various functions of legislation, law enforcement, adjudication and providing mutual oversight.<sup>98</sup> The pursuit of efficiency is one that has gained less attention than the prevention of tyranny. According to Nick Barber, Locke, who was foremost in advocating the efficiency aim, saw separation of powers as necessary to facilitate efficient governance.<sup>99</sup> He asserts that Locke viewed the imposition of limits on governmental powers as a means to enhance their ability to function to the best interest of society.<sup>100</sup> So, the legislature for instance was prohibited from adjudicating in particular cases as there was a risk of blurring between its legislative and adjudicatory function and also its impartiality could not be guaranteed given that it would be applying a law which it enacted.<sup>101</sup> It was not sufficient for the legislature to enact laws that pre-empted restriction on public interest. The enactment of laws that promoted public interest was also necessary.<sup>102</sup> However, the restrictions on governmental powers and enactment of laws that protected and promoted the public interest depended on an efficient

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<sup>96</sup> The role of the judiciary in constitutional and administrative review is considered below in Section 3.3.

<sup>97</sup> *ibid.*

<sup>98</sup> Rose-Ackerman et al (n 91) 48.

<sup>99</sup> Nick Barber, 'Prelude to the Separation of Powers' (2001) 60(1) *Cambridge Law Journal* 59, 64.

<sup>100</sup> *ibid.*

<sup>101</sup> *ibid.*

<sup>102</sup> *ibid.*

constitution.<sup>103</sup> ‘Thus, efficiency and liberty are combined; an efficient constitution is one that protects and fosters liberty.’<sup>104</sup>

Advocating separation of powers here as part of the framework for constitutional governance does not imply a rejection of the intricacies of contemporary governance which allows for some functions to be shared or delegated. Indeed, the modern conception of separation of powers applies to multiple governmental institutions such as ombudsmen, human rights commissions, specialised courts, administrative bodies such as electoral and corruption commissions.<sup>105</sup> Bruce Ackerman also advocates for specialised branches such as an integrity branch, a regulatory branch, a democracy branch and multiple avenues for legislation such as public referendum.<sup>106</sup> Certainly, these are hardly new and are covered in various forms in the preceding set of institutions. The contemporary sources of separation of powers are important in that they act as avenues through which powers have been dispersed and in various ways affect the protection and enhancement of fundamental rights. For instance, electoral commissions are usually charged with regulating the exercise of elections to ensure regular, free and fair elections. Human rights commissions on their part monitor government human rights practices and policies and others, like the South African Human Rights Commission, investigate complaints lodged by victims, secure the provision of adequate redress and evaluate the extent to which governmental institutions achieve their objectives towards the provision of positive rights.<sup>107</sup> Societies have become increasingly complex and so has modern administration. In order to keep in step with changing dynamics, it is important that new ways of conceiving of old principles are considered. Multiple avenues through which fundamental rights can be enhanced are not only commendable but desirable. Nevertheless, it is important that the relevant institutions are subjected to robust forms of checks and balances by corresponding independent institutions.<sup>108</sup> In the absence of

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<sup>103</sup> *ibid.*

<sup>104</sup> *ibid.*

<sup>105</sup> Rose-Ackerman et al (n 91) 48.

<sup>106</sup> Bruce Ackerman, ‘The New Separation of Powers’ (2000) 113(3) *Harvard Law Review* 633, 639, 691-693, 712-714.

<sup>107</sup> Constitution of the Republic of South Africa, s 184 (1) (2). Available at <[www.info.gov.za/documents/constitution/](http://www.info.gov.za/documents/constitution/)> accessed 30 October 2012.

<sup>108</sup> Ackerman (n 106) 723.

robust accountability mechanisms, the separation of powers at the level of state institutions and other regional, federal or local institutions will likely produce multiple sources of possibly conflicting authority and unchecked powers prone to arbitrariness. Similarly, they need to be empowered with the necessary capacity to perform their functions in order to make their existence consequential.<sup>109</sup>

### ***3.1.2. Institutional Design***

In arguing for a system of separated powers and mutual accountability mechanisms, it may be imprudent to be prescriptive with regards to their specific character in the abstract. Although the principles have elements of universal validity, in drafting particular arrangements, the constitution should take into account the historical, political and socio-economic context in which the formal institutions operate.<sup>110</sup> The existence of a variety of models of separation of powers and checks and balances system in Western constitutionalism attests to the relevance of context. The three major Western models (U.S., British and French) bear similarities in the sense that they all have some form of separation of powers and some mechanisms for checks and balances. However, beyond the general expressions of those principles, the specific mechanisms differ. For instance, the American system consists of a distinct separation between the legislature, the judiciary and the executive. The arrangements also include mutual accountability mechanism such as judicial review of executive and legislative acts, presidential accountability through impeachment by Senate<sup>111</sup> and presidential veto of legislative bills subject however to a two-third majority vote override by Senate and the House of Representatives.<sup>112</sup>

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<sup>109</sup> A study on human rights commissions in Africa by Human Rights Watch revealed that a significant number of the commissions were not effective in the protection of rights. They lacked independence and were provided with insufficient financial and material resources, factors which combined to undermine their ability to check executive arbitrariness. See Biniafer Nowrojee, Human Rights Watch, *Protectors or Pretenders?: Government Human Rights Commissions* (Human Rights Watch 2001) <[www.hrw.org/reports/2001/africa/overview/acknowledgements.html](http://www.hrw.org/reports/2001/africa/overview/acknowledgements.html)> accessed 30 October 2012.

<sup>110</sup> See section 2.3 above. See also Ackerman (n 106) 724; Barber (n 99) 66 arguing that institutional design should be combined with sensitivity to cultural and economic dynamics.

<sup>111</sup> U.S. Constitution art 1, s 3, art 2, s 4. Available at <[www.archives.gov/exhibits/charters/constitution.html](http://www.archives.gov/exhibits/charters/constitution.html)> accessed 30 October 2012.

<sup>112</sup> U.S. Constitution, art 1, s 7.



Similarly, the French system consists of a rigid separation between the executive, legislature and the judiciary.<sup>113</sup> However, the checks and balances system places emphasis on the subordinate role of the judiciary as a result of which the ordinary courts are incompetent to perform oversight on the executive as that duty is vested in special administrative courts.<sup>114</sup> Presidential accountability through impeachment is conducted by Parliament (sitting as the High Court).<sup>115</sup> Again, until recent constitutional amendments in 2008, judicial review of legislation was limited to abstract review of pre-promulgated legislation with jurisdiction thereof vested in a special constitutional court.<sup>116</sup> With regard to the President, except in the event of high treason,<sup>117</sup> he is immune from prosecution during his tenure although he may be prosecuted after its expiration.<sup>118</sup>

The above cited arrangements have developed in the context of the political traditions of those countries concerned and in response to particular circumstances existing therein.<sup>119</sup> They have served those countries with varying degrees of success in protecting and enhancing fundamental rights. That does not imply, however, that the arrangements are transplantable without some form of modification to suit the specific context in which they are transplanted and for what purpose. The institutional design should be guided by how far it can minimise over-concentration of power and promote empowerment and accountability. Such considerations do not undermine the basic elements of the principles but help to gear constitutional engineering towards the establishment of more

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<sup>113</sup> Neville Brown & John Bell, *French Administrative Law* (5<sup>th</sup> ed, Oxford University Press 1998) 10.

<sup>114</sup> John F. Allison, *A Continental Distinction in the Common Law: A Historical and Comparative Perspective on English Public Law* (Oxford University Press 1996) 142.

<sup>115</sup> Constitution of the Fifth French Republic 1958 (French Constitution), art. 68. Available at <[www.wipo.int/wipolex/en/details.jsp?id=5560](http://www.wipo.int/wipolex/en/details.jsp?id=5560)> accessed 30 October 2012.

<sup>116</sup> As a consequence of the reforms, judicial review now includes *ex post* review of human rights legislation. See French Constitution, art 61(1). This is discussed further in ch 5.

<sup>117</sup> French Constitution, arts 67 & 68.

<sup>118</sup> French Constitution, art 67. See also Décision No. 98-408 DC of 22 January 1999 (Traité Portant Statut de la Cour Pénal International) *Journal Officiel*, No. 20, 24 January 1999, 1317; Arrêt du octobre 2001 (Assemblée plénière, Breisacher).

<sup>119</sup> For instance, the French antipathy towards the ordinary judiciary can be traced to historical circumstances prior to the French Revolution during which the *parlements* (the royal courts in the *Ancien Régime*) undermined executive/monarchical authority by frustrating the implementation of royal edicts, promoting instability and inequality by granting favours to the feudal hierarchy. See John Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe* (2<sup>nd</sup> ed, Stanford University Press 1985); Allison (n 114) 141.

constructive institutions and mechanisms that relate to the particular circumstances of the environment where the formal arrangements are intended to operate.<sup>120</sup>

### **3.2. Judicial Independence**

The second key principle can be found in the concept of judicial independence. It is derivative of the principle of separation of powers as the latter principle inevitably requires that the judiciary be independent of the executive and legislative power. This subsection discusses the principle and its relevance to the enforcement of fundamental rights and some aspects related to the institutional design.<sup>121</sup>

#### ***3.2.1. The Principle and Implication for Fundamental Rights***

Judicial independence requires that judges are accorded the ability to adjudicate fairly and impartially, guided by the law and are free from external influence be it from the legislature, the executive or other parties to a case. In this study, judicial independence will be mainly centered on independence from the political branches given the present focus on limiting governmental power.

Judicial independence involves two aspects - autonomy and power. Autonomy refers to the degree to which judges are capable of adjudicating impartially and are free from external influence,<sup>122</sup> while power refers to the extent to which judicial decisions are enforceable.<sup>123</sup> The impact of an independent judiciary is given greater significance when

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<sup>120</sup> Backer perceives institutional design 'as a derivative and contingent exercise, always at the service of the core values and the changing detail of material and cultural conditions and of diversely located solutions which influence the articulation and optimal balance of those core values'. Backer, 'From Constitutions to Constitutionalism' (n 5) 116.

<sup>121</sup> A more elaborate discussion is provided in ch 4 on judicial independence in Cameroon.

<sup>122</sup> Christopher Larkins, 'Judicial Independence and Democratisation: A Theoretical and Conceptual Analysis' (1996) 44(4) *American Journal of Comparative Law* 605, 609; Charles Fombad, 'A Preliminary Assessment of the Prospects for Judicial Independence in Post-1990 African Constitutions' (2007) *Public Law* 233, 235.

<sup>123</sup> Charles Cameron, 'Judicial Independence: How Can You Tell it When You See It and Who Cares?' in Stevens Burbank & Barry Friedman (eds), *Judicial Independence at the Crossroads: An Interdisciplinary Approach* (Sage Publications 2002); Larkins (n 122) 605-626; J. Rio-Figueroa and J. Stanton, 'Unpacking the Rule of Law: A Review of Judicial Independence Measures' (Caltech-USC Centre for the Study of Law

a decision rendered impartially and according to the law can be enforced against the relevant authorities.<sup>124</sup>

An independent judiciary should be a desirable quality of a good constitutional system because it has potential to contribute to the checks and balances designed to minimise governmental arbitrariness.<sup>125</sup> Limitation of governmental power entails that government is made to adhere to the rule of law. A judiciary that is empowered and autonomous can potentially impose limits on executive action by reviewing executive decisions or actions to ensure compliance with the law.<sup>126</sup> A judiciary that is perceived as such and possesses the relevant power may also be able to enhance the impact of its decisions through their effective enforcement. It is through the practical enforcement of its decisions that restraints are imposed on governmental authorities.<sup>127</sup> That objective would be difficult to achieve where the judiciary has neither the relevant capacity nor the autonomy to prevent executive arbitrariness.<sup>128</sup>

In addition, judicial independence has potential to promote impartiality and fairness in the adjudication of fundamental rights disputes.<sup>129</sup> As a guardian of fundamental rights, the judiciary should ensure that people are protected from governmental arbitrariness. But where such arbitrariness results in violations, the judiciary has the responsibility of according a fair and impartial dispute resolution process. That will require at least that judges have some degree of autonomy.<sup>130</sup> A judiciary that is extricated from the control of political branches or other parties to a case is less likely to be motivated by political considerations or personal interest in deciding disputes. In the absence of such external

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and Politics and University of Texas Law School Symposium, 26-27 March 2009) 12 <<http://lawgip.usc.edu/centers/cslp/documents/Rios-FigueroaandStaton2009.pdf>> accessed 12 March 2011;

<sup>124</sup> Fombad, 'A Preliminary Assessment' (n 122) 237-238.

<sup>125</sup> Joseph Raz, 'The Rule of Law and its virtues' (1977) 93 *Law Quarterly Review* 195, 198; Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Oxford University Press 1989) 70; Stephen Burbank, 'The Architecture of Judicial Independence' (1999) 72 *Southern California Law Review* 315, 342; John Ferejohn & Larry Kramer, 'Independent Judge, Dependent Judiciary: Institutionalising Judicial Restraint' (2002) 77 *New York University Law Review* 962, 974; Charles Geyh, 'Rescuing Judicial Accountability from the Realm of Political Rhetoric' (2006) 56(4) *Case Western Law Review* 911, 915.

<sup>126</sup> Larkins (n 122) 606-607.

<sup>127</sup> Fombad, 'A Preliminary Assessment' (n 122) 237-238.

<sup>128</sup> *ibid* 237.

<sup>129</sup> *ibid* 237-238, 246.

<sup>130</sup> Larkins (n 122) 606.

considerations, a judge can have greater scope to preserve impartiality and fairness by basing his/her decisions on the law and the facts to a case.<sup>131</sup> Consequently, he/she may be more assertive in limiting governmental power.<sup>132</sup>

Further, an independent judiciary can promote the empowerment role of constitutionalism to the extent that the judiciary is considered as an avenue through which citizens can pursue or exercise their fundamental rights.<sup>133</sup> To understand that point, it is relevant to revert to the doctrine of checks and balances. This requires that the judiciary is empowered with the relevant conditions to perform its oversight function. According to Joseph Raz, these include the accessibility to the courts for litigants.<sup>134</sup> Accessibility also entails a prohibition on adverse factors such as undue delays and excessive cost which may inhibit people's capacity to utilize the judiciary as an avenue for dispute resolution.<sup>135</sup> A judiciary that is insulated from the political branches, and is empowered, accessible and not plagued by prohibitive costs and delays, has the potential to instil confidence in the population.<sup>136</sup> This confidence can serve as a form of empowerment of the population which may now perceive an independent judiciary as a credible and accessible institution through which their rights could be effectively enforced.<sup>137</sup>

The empowerment role of judicial independence is particularly important in less democratic societies where democratic processes and institutions are unavailable as alternative or concomitant avenues to hold the government accountable or where they exist but are weak and indeed can be used by power wielders as tools to perpetuate

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<sup>131</sup> *ibid.* See also Owen Fiss, 'The Limits of Judicial Independence' (1993) 25 *University of Miami Inter-American Law Review* 57, 60.

<sup>132</sup> Larkins (n 122) 606.

<sup>133</sup> Gretchen Helmke & Francis Rosenbluth, 'Regimes and the Rule of Law: Judicial Independence in Comparative Perspective' (2009) 12 *Annual Review of Political Science* 345, 348.

<sup>134</sup> Joseph Raz, *The Authority of Law: Essays in Law and Morality* (Oxford University Press 1979) 217.

<sup>135</sup> *ibid.*

<sup>136</sup> Marc Bühlmann & Ruth Kunz, 'Confidence in the Judiciary: Comparing the Independence and Legitimacy of Judicial Systems' (2011) 34(2) *West European Politics* 317, 331-334.

<sup>137</sup> *ibid.*

fundamental rights violations.<sup>138</sup> Gretchen Helmke and Francis Rosenbluth have argued that in such circumstances an independent judiciary with a commitment to fundamental rights protection has potential to compensate for that deficit.<sup>139</sup>

The above suppositions should not be construed as an attempt to undermine the influence that personal ideologies and preferences may have on judicial decisions.<sup>140</sup> These are, perhaps, aspects which cannot be dealt with by formal guarantees of independence but do not imply that independence is not useful. It is, however, possible to advocate for judicial accountability as a mechanism to minimise the incidents of unfavourable outcomes to fundamental rights enforcement that may result from such a situation.<sup>141</sup> The judiciary as an important element in the checks and balances system, should be subject to some measure of accountability itself to pre-empt the abuse of judicial power. The absence of accountability can create scope for reliance on personal ideologies or may foster a culture of complacency which may result in inefficiency and unwarranted delays.<sup>142</sup> Moreover, the absence of oversight may give judges free reign to engage in abusive practices such as corruption that adversely impact on their impartiality.<sup>143</sup> By subjecting judges to some measure of oversight, judicial accountability has potential to reduce the incidence of an errant judiciary that is not responsive to its public duty to administer justice in a fair, impartial and consistent manner.<sup>144</sup>

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<sup>138</sup> Tom Ginsburg and Tamir Moustafa advance that as a reason to study courts and judicial institutions even in authoritarian regimes. Although in such regimes courts are used by political leaders to advance their interests, the courts may also serve as sites for political resistance. See Ginsburg & Moustafa, 'Introduction' in Ginsburg and Moustafa (eds) *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge University Press 2008) 2-3.

<sup>139</sup> Helmke & Rosenbluth (n 133) 345. See also Fombad, 'A Preliminary Assessment' (n 122) 238.

<sup>140</sup> David Law, 'Judicial Independence' in Badie, Berg-Schlosser & Morlino (eds), *International Encyclopedia of Political Science* (vol 5, Sage Publications 2011) 1370.

<sup>141</sup> Law, 'Judicial Independence' (n 140) 1372.

<sup>142</sup> Such a situation was observed in Brazil where an independent judiciary was not backed by accountability measures. The absence of accountability promoted the development of a culture of corruption in the judiciary, inefficiency and mismanagement. See Carlos Santiso, 'Economic Reform and Judicial Governance in Brazil: Balancing Independence with Accountability' in Siri Gloppen et al (eds), *Democratisation and the Judiciary: The Accountability Function of Courts in New Democracies* (Frank Cass 2004) 161- 180.

<sup>143</sup> Law, 'Judicial Independence' (n 140) 1370.

<sup>144</sup> Burbank, 'The Architecture of Judicial Independence' (n 125) 399; Burbank, 'The Past and Present of Judicial Independence' (1996) 80(3) *Judicature* 117, 117-118.

Arguably, accountability is a difficult concept to reconcile with independence. Whilst the former has the potential to enhance the judiciary's ability to promote the objectives discussed above, it can also undermine independence. That is so because too much accountability can inhibit independence particularly where accountability is to the political branches.<sup>145</sup> That implies that the judiciary depends on the latter for the same aspects that are meant to secure their independence. Such a situation places judges at the mercy of the political branches and may create various career oriented imperatives for them to act partially.<sup>146</sup> For instance, a judge may be disciplined as a punitive measure for failing to protect the interests of the executive or may receive a promotion as recognition for a decision which may have unfairly advanced the interests of the executive against the victim of a fundamental rights violation.

By and large, an independent judiciary has the potential to contribute to the constitutional system for fundamental rights enforcement. Although judges might still be influenced by their personal ideologies, independence should still be considered relevant and can be complemented by accountability. The latter concept might be controversial, but it is feasible that a balance in that relationship can be achieved through institutional design of the mechanisms for guaranteeing independence.<sup>147</sup>

### ***3.2.2. Institutional Design***

While a constitution may formally guarantee independence, its enhancement and consolidation are influenced by the conditions or strategies adopted to protect judges from extraneous influence. These include the method of appointment, terms of service, disciplinary mechanisms, remuneration, the internal organisation of the judiciary and financial and administrative regulations relating to the judiciary as an institution.<sup>148</sup> Such conditions are important because they are designed to insulate judges particularly from

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<sup>145</sup> Nuno Garoupa & Tom Ginsburg, 'Guarding the Guardians: Judicial Councils and Judicial Independence' (2009) 57(1) *American Journal of Comparative Law* 201, 202.

<sup>146</sup> *ibid.*

<sup>147</sup> Burbank, 'Judicial Independence, Judicial Accountability and Inter-branch Relations' (2007) 95 *The Georgetown Law Journal* 909, 913.

<sup>148</sup> Raz, *The Authority of Law* (n 134) 217; Law, 'Judicial Independence' (n 140) 1370.

the control of political branches that may seek to influence their decisions.<sup>149</sup> It requires at a minimum that the entire judicial career, from appointment, promotion and discipline is based on transparent and objective criteria and overseen by independent institutions.<sup>150</sup> The internal organisation of the judiciary should not be structured in such a way as to place judges under the unfettered control of hierarchical superiors or indeed external parties that can influence the hierarchy.<sup>151</sup> Additionally, sufficient financial arrangements should be made for judges and the judiciary as an institution to promote the independence of judges and the judiciary as a whole.<sup>152</sup>

The extent to which the constitution entrenches the conditions is crucial to promoting the judiciary's autonomy and power. In some political systems the constitutional guarantees are backed by systems of diffused responsibilities through which a number of institutions including executive, legislatures and judicial councils are responsible for appointments, promotions, discipline and remuneration of judges.<sup>153</sup> A key advantage of such an approach is that the judicial career is not placed under the control of a single institution. As such, judicial independence has greater prospects of being achieved given that it involves a number of institutions with shared responsibility rather than one possessing overall control. There is scope for the institutions to act collectively to ensure that the judiciary is provided with the necessary conditions for its autonomy and power. This is the approach adopted by the South African Constitution which involves a number of institutions. An example can be perceived from the method of the removal of judges which involves Parliament, the executive and the Judicial Service Commission.<sup>154</sup>

The approach adopted by some Francophone African countries with variants of the French civil law model places emphasis on the executive who controls the judicial

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<sup>149</sup> Raz, *The Authority of Law* (n 134) 217.

<sup>150</sup> Fombad, 'A Preliminary Assessment' (n 122) 243- 250. See also African Commission's Recommendations on the Respect and Strengthening of the Independence of the Judiciary (1996), 4(h) (i), (m), (o), (p), (q) & (r); U.N. Basic Principles on the Independence of the Judiciary (1985), principles 10-13, 17, 19 & 20.

<sup>151</sup> Fiss (n 131) 58.

<sup>152</sup> *ibid* 63. See also Fombad, 'A Preliminary Assessment' (n 122) 245, 249.

<sup>153</sup> Constitution of South Africa, s 177.

<sup>154</sup> Constitution of South Africa, s 177.

councils and the judicial career.<sup>155</sup> In Côte d'Ivoire and Mali, the judicial council which is responsible for recommending judges for appointments, promotion and discipline to the President, is chaired by the same President.<sup>156</sup> Where responsibility is vested in judicial councils, it is possible to expect that judicial independence would be enhanced. But that too is predicated on the independence of the council and the powers conferred on it.<sup>157</sup> Whereas vesting overall control of the judiciary in the executive in effect makes the former accountable to the same institution that should guarantee its independence.<sup>158</sup> Such an approach is more precarious for judicial independence as it can provide greater scope for the executive to oversee the development of a compliant judiciary as a means of advancing its own objectives. Given that the executive unilaterally controls the conditions for guaranteeing independence it may use the same to exert pressure on the judiciary or control the outcome of decisions from the courts.<sup>159</sup> As this thesis shall attempt to demonstrate, a major obstacle to the development of an independent judiciary in Cameroon is the extent to which the executive is vested with powers to control the judiciary.

### 3.3. Judicial Review

The third feature in the current framework of analysis of constitutionalism is judicial review of both administrative and legislative acts. They will be discussed separately, applying the terminology administrative and constitutional review respectively. There will be a greater focus on the latter because it is a more contested feature of constitutionalism than the former. According to David Law, 'A judicial power to declare

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<sup>155</sup> Fombad, 'A Preliminary Assessment' (n 122) 243, 244, 249, 251.

<sup>156</sup> Constitution of Côte d'Ivoire (Law No. 2000-513 of 01 August, 2000), arts 104-107. Available at <[www.wipo.int/wipolex/en/details.jsp?id=6479](http://www.wipo.int/wipolex/en/details.jsp?id=6479)> accessed 30 October 2012; Constitution of the Republic of Mali 1992, arts 81-82. Available at <[www.wipo.int/wipolex/en/details.jsp?id=7446](http://www.wipo.int/wipolex/en/details.jsp?id=7446)> accessed 30 October 2012.

<sup>157</sup> Garoupa & Ginsburg, 'Guarding the Guardians' (n 145) 204; Garoupa & Ginsburg, 'The Comparative Law and Economics of Judicial Councils' (2008) 27(1) *Berkeley Journal of International Law* 51, 54.

<sup>158</sup> Garoupa & Ginsburg, 'Guarding the Guardians' (n 145) 202. See also Lovemore Madhuku, 'Constitutional Protection of the Independence of the Judiciary: A Survey of the Position in Southern Africa' (2002) 46(2) *Journal of African Law* 232, 234.

<sup>159</sup> Cappelletti (n 125) 105-106.



void the acts of elected legislatures, however, is more controversial'.<sup>160</sup> Matters relating to institutional design will also be discussed.

### **3.3.1 (a) *Administrative Review and Fundamental Rights***

Administrative review is the process by which courts review executive or administrative acts to determine conformity with the law.<sup>161</sup> It serves at least three interrelated purposes with regard to constitutionalism. Firstly, it upholds the checks and balances system, secondly, it promotes adherence to the rule of law and lastly, it enhances the protection of fundamental rights.<sup>162</sup> Because some aspects of the first two points were covered above, only the last point will be dealt with here.

The courts are the principal institutions that adjudicate disputes between executive officials and citizens.<sup>163</sup> Because executive officials exercise powers that may affect the exercise of fundamental rights, there is potential for abuse where such powers are not controlled. Fundamental rights can be protected in that the courts can declare a rights infringing act to be unlawful. In that way, it defines the contours of legitimate government action. In addition, the courts can make an order for remedies. In certain circumstances, the provision of remedies is considered a fundamental right.<sup>164</sup> That point is underscored by some international instruments which regard the provision of effective remedies as integral to the substantive rights guaranteed therein.<sup>165</sup> For instance, the right to personal liberty guaranteed under the ICCPR incorporates the rights to habeas corpus and compensation for unlawful or arbitrary detention.<sup>166</sup> The ability of courts to declare an action unlawful and to provide remedy is an important aspect of the empowering

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<sup>160</sup> David Law, 'Judicial Review' in Badie, Berg-Schlosser & Morlino (eds) *International Encyclopedia of Political Science* (vol 5, Sage Publications 2011) 1372.

<sup>161</sup> *ibid.*

<sup>162</sup> Thomas Sargentich, 'The Critique of Active Judicial Review of Administrative Agencies: A Re-evaluation' (1997) 49 *Administrative Law Review* 599, 601.

<sup>163</sup> Bellamy, 'The Political Form of the Constitution' (n 9) 447.

<sup>164</sup> See for instance the International Covenant on Civil and Political Rights (ICCPR), art 2(3) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), art 14(1).

<sup>165</sup> *ibid.*

<sup>166</sup> ICCPR, art 9 (4) & (5).

dimension of constitutionalism. This is so because it creates scope for citizens to assert their rights against the executive.

Administrative review is also useful where executive powers are exercised in excess of authority. That is particularly important as administrative authorities are sometimes granted wide discretionary powers to pursue policy objectives.<sup>167</sup> Subjecting such powers to judicial oversight helps to establish limits on the way they are used by making them operate in ways that do not undermine fundamental rights.<sup>168</sup>

### ***3.3.1(b) Constitutional Review and Fundamental Rights***

Constitutional review can be referred to as the mechanism through which courts interpret legislative enactments to determine conformity with the constitution. Its potential to enhance the protection of fundamental rights are discussed below.

Constitutional review serves as an oversight mechanism to ensure that legislative powers are not exercised arbitrarily to undermine fundamental rights. As history has demonstrated, legislative power if left unchecked can produce tyranny against the population.<sup>169</sup> This was formerly the case in South Africa where apartheid was institutionally legalised through legislative enactments. Constitutional review can pre-empt the application of such legislation and ensure that they are constructed in accordance with the constitution. By so doing, the constitution is reinforced as the reference point for governmental action. Given the central role of the constitution in articulating fundamental rights commitments and regulating governmental power to that effect, it is important that some mechanism exists to ensure that the constitution is fully implemented.<sup>170</sup>

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<sup>167</sup> A. H. Hammond, 'Judicial Review: The Continuing Interplay between Law and Policy' (1998) *Public Law* 34, 35-36.

<sup>168</sup> *ibid.* See also Simon Halliday, 'The Influence of Judicial Review on Bureaucratic Decision Making' (2000) *Public Law* 110 (arguing that administrative review reduces administrative discretion and potentially advances specific areas of public policy).

<sup>169</sup> Alec Walen, 'Judicial Review in Review: A Four -part Defence of Legal Constitutionalism' (2009) 7(2) *International Journal of Constitutional Law* 329, 332.

<sup>170</sup> *ibid* 351-352. See also Raz, 'On the Authority and Interpretation of Constitutions' (n 31) 153.

Constitutional review can also promote the adaptability of legislation to reflect evolving conceptions of fundamental rights.<sup>171</sup> Fundamental rights concepts are not static and do evolve to respond to changing social circumstances which may affect the nature and scope of various rights provisions. If constitutionalism is understood partly as concerned with the organisation of governmental power, it implies that that organisation should adapt to changing circumstances to guarantee continued protection of rights. Constitutional review can serve as a catalyst enabling individuals or the population to initiate that change and legislatures to respond to the demand for change.<sup>172</sup>

Constitutional review can also empower individuals to have a more influential role on the legislative process. People can then be more assertive in demanding better protection of their constitutional rights especially when changing circumstances necessitate a change in the law or where some rights have been under-protected. As Keith Whittington suggests, the nature of politics is such that legislators may be more driven by the will to retain power or by other issues which provide fewer incentives to focus on civil liberties concerns.<sup>173</sup> As such, there may be an outcry from the population for law reform to improve on the protection of rights but the legislature has not done so or has failed to do so sufficiently with the effect that rights are being infringed. The availability of constitutional review in such circumstances provides scope for people to use the courts to challenge such infringing statutes and by so doing possibly triggering legislative reform.<sup>174</sup>

Although constitutional review has increasingly gained prominence as a feature of constitutionalism, it has been challenged on the basis of its democratic legitimacy in a

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<sup>171</sup> Charles Fombad, 'Protecting Constitutional Values in Africa: A Comparison of Botswana and Cameroon' (2003) 36(1) *The International and Comparative Law Journal of Southern Africa* 83, 100.

<sup>172</sup> *ibid.*

<sup>173</sup> Keith Whittington, 'An "Indispensable Feature"? Constitutionalism and Judicial Review' (2002) 6 *Legislation and Public Policy* 21, 27-30.

<sup>174</sup> In a recent Kenyan case, individuals were able to challenge the constitutionality of a law potentially infringing their right to life. The Court in addition to declaring the law unconstitutional stated that it was incumbent on the state to take the necessary measures to amend the infringing provisions of that law. See *Patricia Ochieng & Two Others v. Attorney General & another* Petition No. 409 of 2009, discussed further in ch 5.

democratic society.<sup>175</sup> Jeremy Waldron for one has argued that constitutional review may not be necessary in a democratic society where rights are respected and the judiciary and other democratic institutions are well functioning.<sup>176</sup> He asserts that, by taking democratic decisions away from elected representatives and vesting in the courts, it strips the people of their rights to participate in the democratic process.<sup>177</sup> Those concerns are of course salient in the American system where the constitution does not expressly provide for constitutional review and the Supreme Court which has final jurisdiction in review matters, is composed of unelected judges.<sup>178</sup> Nevertheless, as Annabel Lever argues, judges can gain popular legitimacy by representing the democratic aspirations of the society through their actions and deliberations.<sup>179</sup> Besides, the legitimacy of constitutional review can be inferred from popular support and the objective that it seeks to achieve. Assuming as Waldron does that there is popular support for the protection of fundamental rights,<sup>180</sup> then it is possible to presume that a mechanism geared at enhancing their protection would receive support from the population. Popular support can then provide the legitimacy that sceptics deem to be absent.<sup>181</sup>

Despite legitimacy concerns, constitutional review even in democracies has the potential to reinforce the protection framework. It can serve as an additional avenue through which citizens can be more assertive in demanding better protection.<sup>182</sup> Legislation may cause

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<sup>175</sup> For instance Mark Tushnet, *Taking the Constitution Away from the Courts* (Princeton University Press 2000); Larry D. Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (2004); Jeremy Waldron, 'The Core of the Case Against Judicial Review' (2006) 115 (6) *Yale Law Journal* 1346; Richard Bellamy, *Political Constitutionalism: A Republican Defense of the Constitutionality of Democracy* (Cambridge University Press 2007).

<sup>176</sup> Waldron, 'The Core of the Case' (n 175) 1353, 1360 & 1369. See also Bellamy, *Political Constitutionalism* (n 175) 39, 249-257.

<sup>177</sup> Waldron, 'The Core of the Case' (n 175) 1352.

<sup>178</sup> Miguel Schor argues that the relevance of constitutional review can be better appreciated if there was less focus on the U.S. experience. Schor, 'Mapping Comparative Judicial Review' (2008) 7 *Washington University Global Studies Review* 257, 287.

<sup>179</sup> Annabel Lever, 'Democracy and Judicial Review: Are they Really Incompatible?' (2009) 7(4) *Perspectives on Politics* 805, 808-809.

<sup>180</sup> Waldron, 'The Core of the Case' (n 175) 1360-1369.

<sup>181</sup> In the American case, despite academic frenzy over the legitimacy of constitutional review, it still appears to command some support from the population; see Mark Silverstein and William Haltom, 'The Legitimacy Debate and Judicial Review' (1987) 19(3) *Polity* 486, 488.

<sup>182</sup> Richard Fallon Jr, makes a similar argument asserting that it can provide an additional means of protecting fundamental rights. See Richard H Fallon Jr, 'The Core of an Uneasy Case for Judicial Review' (2008) 121 *Harvard Law Review* 1693, 1699.

great injustices and facilitate violations of fundamental rights of individuals who would have to wait for an amendment initiated by parliament, however long it takes. By contrast, constitutional review can allow such individuals with genuine concerns to trigger the process of amendment.<sup>183</sup> Recent developments in the constitutional review systems in France and Britain (the bastions of parliamentary supremacy) suggest that, it can function as an additional protection mechanism.<sup>184</sup> France for one has embraced *ex-post* constitutional review<sup>185</sup> with individuals guaranteed access by being able to raise issues of constitutionality during ordinary litigation.<sup>186</sup>

In constitutional systems where constitutional review is expressly provided for, concerns about the best ways of achieving its objectives are more important.<sup>187</sup> In most European constitutional systems, domestic constitutions or international instruments expressly provide for constitutional review, as such legitimacy concerns are not pervasive.<sup>188</sup> In less advanced democracies the ideal of constitutional review as a mechanism for rights protection is compelling.<sup>189</sup> Waldron, despite his scepticism suggests that it can be supported in certain circumstances such as ‘peculiar pathologies, dysfunctional legislative institutions, corrupt political cultures, legacies of racism and other forms of endemic prejudice’.<sup>190</sup> Such circumstances are prevalent in sub-Saharan African countries where the political systems are not as advanced or well ordered as Western democracies and the

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<sup>183</sup> Lever (n 179) 812.

<sup>184</sup> In Britain, under the Human Rights Act 1998, s 4 (2) (4) the courts can issue a declaration of incompatibility where a legislative provision is incompatible with a right guaranteed under the European Convention on Human Rights.

<sup>185</sup> Loi Constitutionnelle No. 28-724 of 23 July 2008 on the Modernisation of the Institutions of the Fifth Republic and implementing legislations Loi No. 2009-1523 of 10 December 2009; Loi No. 2010-148 7; Loi No. 2010-149 of 10 February 2010, relating to the application of article 61-1 of the French Constitution.

<sup>186</sup> Guillaume Drago, ‘Le Nouveau Visage du Contentieux Constitutionnel’ (2010) 84(4) *Revue Française de Droit Constitutionnel* 751; Gerald Neuman, ‘Anti-Ashwander: Constitutional Litigation as a First Resort in France’ (2010) 43 *International Law and Politics* 15.

<sup>187</sup> Luc Trembley, ‘General Legitimacy of Judicial Review and the Fundamental Basis of Constitutional Law’ (2003) 23(3) *Oxford Journal of Legal Studies* 525, 537; Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press 2003) 16; Louis M. Seidman, ‘Acontextual Judicial Review’ (Selected Works of L. M. Seidman 2010) 2 < [http://works.bepress.com/louis\\_seidman/2](http://works.bepress.com/louis_seidman/2)> accessed 12 March 2011.

<sup>188</sup> Matthias Kumm, ‘Institutionalising Socratic Contestation: The Rationalist Human Rights Paradigm, Legitimate Authority and the Point of Judicial Review’ (2007) 1(2) *European Journal of Legal Studies* 1, 2.

<sup>189</sup> Kwasi Prempeh ‘*Marbury* in Africa: Judicial Review and the Challenge of Constitutionalism in Contemporary Africa’ (2006) 80(1) *Tulane Law Review* 1’ 2-3; Goldsworthy (n 74) 121.

<sup>190</sup> Waldron, ‘The Core of the Case’ (n 175) 1406. See also Goldsworthy (n 74) 121.

democratic processes cannot even be considered as having the potential to regulate themselves. Under those conditions, it is arguable that there is need for an alternative mechanism to regulate the extent to which legislatures articulate the fundamental rights concerns of their societies. Indeed Charles Fombad argues that deficient democratic processes have become one of the most significant causes of democratic paralysis in Africa and have provided avenues for the perpetuation of unjustified domination by incumbent political leaders.<sup>191</sup> According to Fombad, the position is made more untenable by the absence of efficient oversight mechanisms on the legislature particularly in some Francophone African countries where constitutional review is almost non-existent due to its deficient institutional design.<sup>192</sup> The existence of an effective judicial review mechanism provides optimism that its potential benefits can help to nurture and strengthen the protection of fundamental rights.<sup>193</sup>

### **3.3.2. Institutional Design**

As with the separation of powers and judicial independence, the institutional configuration adopted for review should have the potential to enhance the realisation of fundamental rights. There are at least three issues that are worthy of note here - the form of review, access, and the structure of the institution vested with powers of review.

With regard to constitutional review, there are various forms ranging from weak to strong and abstract *a priori* (*ex-ante*) to *ex-post* review. In a system of weak form, a court can make a declaration to the effect that a statute is incompatible with fundamental rights provisions but the court will not decline to apply it. Variants of this are practiced in Britain, Canada and New Zealand.<sup>194</sup> On the other hand, with strong form review as practiced in the U.S.A., the court's decision on unconstitutionality is conclusive and leads to the invalidation of the law. As a result, the statute will not apply to the case being

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<sup>191</sup> Charles Fombad, 'Constitutional Reforms and Constitutionalism in Africa: Reflections on some Current Challenges and Future Prospects' (2011) 59 *Buffalo Law Review* 1007, 1022.

<sup>192</sup> *ibid* 1025-26.

<sup>193</sup> Prempeh (n 189); Herman Swartz, *The Struggle for Constitutional Justice in Post-Communist Europe* (University of Chicago Press 2000) 248.

<sup>194</sup> For a discussion of variants of the weak form see, Stephen Gadbaum, 'The New Commonwealth Model of Constitutionalism' (2001) 49(4) *American Journal of Comparative Law* 707.

heard in the court. Both forms are also variants of ex-post review given that they operate after a statute has been promulgated. With *a priori* review, however, which operated in France prior to 2008, the constitutionality of a statute is determined in the absence of a concrete case and only *prior* to the promulgation of the statute.<sup>195</sup>

It is again difficult to be prescriptive in the abstract about the approach that any society should adopt. That notwithstanding, it is more than arguable and in line with the view of constitutionalism generally advanced in this thesis that the overriding concerns guarding choices should be the positive impact that any approach is likely to have on the protection of fundamental rights given the salient conditions (political, legal, social, etc) of the society. For instance, in less democratic societies with ‘peculiar pathologies’ a more robust and affirmative approach is desirable rather than a weak form. The public may have a strong commitment to the protection of CPR but any reaction to rights infringing laws may not elicit any or sufficient response from their elected representative. Moreover, a declaration of incompatibility which depends on the goodwill of an executive official or the same unresponsive legislative representatives is almost as good as the status quo. A system based on *a priori* review is even less protective and in a way worse than a complete absence. That is so because a statute which by its application facilitates violation of CPR will continue to apply given that its constitutionality cannot be challenged once it has been promulgated. As will be demonstrated in the case of Cameroon, the *a priori* form of review constitutes one of the major challenges to the realisation of CPR. Given that the constitutionality of legislation cannot be invoked after its promulgation, it has been possible for legislation infringing some CPR to be applied.

Regarding access, in both administrative and constitutional review, as earlier mentioned it is an important means of empowering people to use the courts to assert their rights.<sup>196</sup> With constitutional review in particular, some systems are designed to specifically restrict individual access to the courts. Such a restriction undermines the rule of law.<sup>197</sup> It also

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<sup>195</sup> Ginsburg, *Judicial Review in New Democracies* (n 187) 38-39.

<sup>196</sup> Section 3.2 & 3.3 above.

<sup>197</sup> Raz, *The Authority of Law* (n 134) 229.

deprives the ordinary citizen of the ability to engage more assertively with the legislative process to enhance the enactment of progressive fundamental rights legislation.

Another key aspect regarding institutional design is judicial independence, as the judiciary cannot perform review effectively if it is subject to executive or legislative constraints. The conception of empowerment and autonomy here follows the basic presumptions discussed above with regard to judicial independence.<sup>198</sup> Thus, the method of selection of judges, their tenure, terms and conditions of service need to operate in a way that guarantees their autonomy and power.<sup>199</sup>

## CONCLUSION

This chapter has proposed the concept of constitutionalism presenting it as one possessing instrumental value for protecting and enhancing fundamental rights. The constitution is central here, establishing and defining amongst other things, fundamental rights commitments and their method of enforcement, governmental powers and the contours of legitimate governmental action. In addition, it was argued that constitutional engineering should take into account the specific dynamics of the context in which a constitution is to operate. Constitutionalism being a system of organisation of power structures, allows scope for such contextualisation. It provides for basic principles (which have universal value) to guide such arrangements but in putting those arrangements into place, constitutionalism becomes a living reality when the arrangements are relevant to the context and are sufficiently robust. Should a constitution fail to adequately reflect those considerations, it is likely to produce enforcement machinery inadequate for the realisation of fundamental rights.

The chapter also presented an analytical framework which will be applied as a template for assessing the practise of constitutionalism in Cameroon. The framework broadly outlined some considerations that are relevant for the development of institutional

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<sup>198</sup> Section 3.3.2 above.

<sup>199</sup> *ibid.*



features of constitutionalism. While recognising that institutional designs should be tailored to the specific context, it is submitted that they should be guided by the basic tenets of constitutionalism advocated here.

The following chapters will analyse in more detail constitutional arrangements in Cameroon and their influence on CPR. That analysis begins with a discussion of its constitutional evolution.

## **Chapter 2**

### **The Colonial Legacy and the Constitutional Evolution of Cameroon**

#### **INTRODUCTION**

This chapter charts the constitutional evolution of Cameroon from the period of colonial administration to independence and immediate post independence. It attempts to explain how and why having been bequeathed with the British and French colonial legacies, the latter today is the predominant system. It will also attempt to explain how in the process of constitutional evolution customary law and indigenous institutions were progressively subordinated. The aim is to provide the background within which the current approach to constitutionalism and CPR enforcement can be understood.

The chapter is divided into four sections, the first of which provides a very brief background to the advent of British and French colonial administration. Section two discusses some aspects relating to British and French colonial governance and CPR. In section three, a comparative analysis of the British and French colonial constitutional legacy is carried out. This analysis aims to draw attention to the differences in the approach to constitutionalism and underscore the point that some of the features of the British colonial legacy potentially provide a more conducive foundation for CPR enforcement.<sup>1</sup> Section four charts the post-independence constitutional developments in 1961 and 1972 within the framework for constitutionalism developed in Chapter 1. It will demonstrate how the French constitutional legacy became entrenched and how the British legacy and indigenous features were subsequently relegated. That section also provides a prelude to the adoption of the 1996 Constitution which will be examined in detail in subsequent chapters.

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<sup>1</sup> As will become clearer in ch 6, the analysis in that section will be drawn upon to argue for a greater recognition of the British colonial legacy.

## 1. BACKGROUND

The Germans were the first European powers to establish colonial administration in Cameroon from 1884 to the outbreak of the First World War in 1914. Following their defeat in the War, an Anglo-French *Condominium* was set up from 1914-1916 and they were eventually expelled from Cameroon in February 1916.<sup>2</sup> Cameroon was subsequently divided unequally between France and Britain with Britain gaining control of two non-contiguous sections of the territory which later became known as Northern and Southern Cameroons, while France took portions constituting about ninety percent of the territory.<sup>3</sup> In June 1919 the Treaty of Versailles established a mandates system to place conquered colonies under international administration.<sup>4</sup> Cameroon was brought under that system and from 1922 it was administered by France and Britain as a mandated territory of the League of Nations until 1945 when the mandates were replaced by trusteeship agreements under the auspices of the United Nations.<sup>5</sup> France and Britain proceeded to administer their territories according to their respective policies from that point until independence was granted in 1960 and 1961 respectively.<sup>6</sup>

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<sup>2</sup> Neville Rubin, *Cameroon: An African Federation* (Pall Mall 1971) 42. See also Emmanuel Chiabi, *The Making of Modern Cameroon: A History of Substate Nationalism and Disparate Union, 1914-1961* (University Press of America 1997) 9-10; Victor J. Ngoh, *Southern Cameroons, 1922-1961: A Constitutional History* (Ashgate 2001)1-2.

<sup>3</sup> Charles M. Fombad, 'Researching Cameroonian Law', (June/July 07) <[www.nyulawglobal.com/globalex/Cameroon.htm](http://www.nyulawglobal.com/globalex/Cameroon.htm)> accessed 13 August 2009. See also; Jeswald W. Salacuse, *Legal Systems of Africa Series: French Speaking Africa (Africa South of the Sahara)* (Vol 1, The Michie Company 1969) 264-265; Fombad, 'The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?' (1998) 42 (2) *Journal of African Law* 172; Nicodemus Awasom, 'The Reunification Question in Cameroon History: Was the Bride a Reluctant or an Enthusiastic One?' (2000) 47(2) *Africa Today* 90.

<sup>4</sup> Yale Law School, 'The Avalon Project. Documents in Law, History and Diplomacy: The Versailles Treaty, 28 June 1919' <<http://avalon.law.yale.edu/imt/partxv.asp>> (accessed 31 October 2012). See also Rubin (n 2) 42; Ngoh, *Southern Cameroons* (n 2) 2; Fombad, 'Researching Cameroonian Law' (n 3).

<sup>5</sup> Cameroon under French Trusteeship Agreement as Approved by the General Assembly of the United Nations, and Cameroon under United Kingdom Trusteeship Agreement as Approved by the General Assembly of the United Nations, reproduced in Rubin (n 2) 203-213, Appendices III & IV respectively. See also Ngoh, *Southern Cameroons* (n 2) 2.

<sup>6</sup> This thesis will focus on Southern Cameroons and French Cameroon as a result of the fact that Northern Cameroons no longer forms part of Cameroon. Northern Cameroons was administered as part of Northern Nigeria during the colonial era and in 1961, it gained independence by integrating with Nigeria.

## **2. RECEPTION AND DEVELOPMENT OF COLONIAL LAW IN CAMEROON**

In Cameroon as elsewhere in colonial Africa, France and Britain adopted a civil law or common law systems in their respective sections of the territory. The basis of that transplantation was initially Article 9 of the League of Nations Mandate Agreement with France<sup>7</sup> and Britain<sup>8</sup> which gave these colonial powers authority to pursue administration and legislation in accordance with their laws contingent on modifications to accommodate local conditions. Subsequently, that provision was replaced by article 4 of the Trusteeship Agreement with France and Article 5 of the Trusteeship Agreement with Britain when Cameroon became a Trust Territory.<sup>9</sup> Article 5 (a) relating to Britain provided that Britain shall have ‘full powers of legislation, administration and jurisdiction in the Territory’ to be administered in accordance with its laws subject to modifications necessitated by local conditions and subject to the United Nations Charter and the present Trusteeship Agreement. Article 4(1) of the Agreement relating to France was similarly worded except that it did not require French law to be modified to accommodate local conditions. The experiences in both the French and British territories are considered separately below.

### **2.1. Law and Constitutional Politics in French Cameroon under French Colonial Administration.**

The delegation of legislative powers over French Cameroon to France led to the transplantation of French civil law through the use of reception statutes. A Decree of 1924 made applicable laws and decrees promulgated in French Equatorial Africa prior to 1 January 1924,<sup>10</sup> which consisted of legislation transplanted from metropolitan France. The rest of the colonial era witnessed further enactment of decrees specifically applicable to French Cameroon and also legislation already enforced in France.<sup>11</sup> Notwithstanding

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<sup>7</sup> Mandate for the Administration of Part of the Former German Territory of the Cameroons Conferred upon the Government of the French Republic, Confirmed and defined by the Council of the League of Nations. London, 20 July 1922. Reproduced in Rubin (n 2) Appendix 1, 196-198.

<sup>8</sup> British Mandate for the Cameroons, 20 July 1922. Reproduced in Rubin (n 2) Appendix II, 199-203.

<sup>9</sup> See (n 5).

<sup>10</sup> Decree of 22 May 1924, art 10 cited in Salacuse (n 3) 29.

<sup>11</sup> Salacuse (n 3) 31.

the transplantation of French laws, customary law was preserved although its influence was considerably diminished. It only applied insofar as it was not repugnant to public policy (*ordre public*) and its jurisdiction was limited to the indigenous population that had not acquired French citizenship.<sup>12</sup>

The French colonial administrative landscape consisted of a civil commissioner at the helm and supported by regional and district administrators and an advisory body known as the *Conseil d'Administration*.<sup>13</sup> There was no distinct separation of powers as the administrators exercised executive and judicial powers concurrently. By 1925 in a bid to incorporate indigenous populations into the administrative network, a *Conseil de Notables* composed of local chiefs, was created in each district.<sup>14</sup> That institution was firmly controlled by the French authorities who proceeded to alter the chieftaincy system by creating artificial chiefs amenable to colonial manipulations.<sup>15</sup> In addition, adjudicatory powers previously exercised by local chiefs were dispensed with and the chiefs were vested with powers of conciliation in civil matters, although they could also give advisory opinions to French administrators in criminal matters.<sup>16</sup> In this way, the French developed a system which ensured the erosion of local authority and the firm establishment of French rule.<sup>17</sup> It also added to the mistrust of traditional chieftaincy institutions by indigenous populations who regarded the chiefs as tools of the colonial administration.<sup>18</sup>

The judicial system (consisting of courts with jurisdiction over persons of French origin and indigenes) was considered an administrative body under the French Ministry of

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<sup>12</sup> *Afrique Équatoriale Française*: Decree of 16 August 1912, art 36. Despite statutory recognition of customary law, the reality was different. See text to (n 17) below.

<sup>13</sup> Rubin (n 2) 50; David Gardinier, *Cameroon: United Nations Challenge to French Policy* (Oxford 1963) 15; Victor T. LeVine, *The Cameroons: From Mandate to Independence* (University of California Press 1964) 94.

<sup>14</sup> LeVine, *The Cameroons: From Mandate* (n 13) 92-94.

<sup>15</sup> Rubin (n 2) 50. Like the French, the British also tended to depose less compliant chiefs. This is discussed below in section 2.2.

<sup>16</sup> LeVine, *The Cameroons: From Mandate* (n 13) 103; Rubin (n 2) 51.

<sup>17</sup> LeVine, *The Cameroons: From Mandate* (n 13) 94.

<sup>18</sup> Peter Geschiere discusses that aspect with particular reference to the Maka chiefs from South-East Cameroon, who are still affected as a result of that historical mistrust. Geschiere, 'Chiefs and Colonial Rule in Cameroon: Inventing Chieftaincy, French and British Style' (1993) 63(2) *Journal of the International African Institute* 151, 153-156.

Justice and Ministry of State in Charge of relations with Associate States.<sup>19</sup> Their administration at the territorial level was overseen by the *Conseil Supérieur de la Magistrature* (CSM), which was also responsible for discipline and independence of judges.<sup>20</sup> Nevertheless, the judges did not benefit from a guarantee of security of tenure.<sup>21</sup> Judicial independence was also undermined through the control exerted by administrative authorities in the courts, particularly those with jurisdiction over natives. The Commissioner was responsible for appointment and dismissal of judges and could transfer cases between courts.<sup>22</sup> District administrators supervised, controlled and presided over native courts.<sup>23</sup> They also had powers to authorise execution of judgements, receive appeals from judgments delivered by other native courts and record depositions from native witnesses.<sup>24</sup> The powers granted to judicial courts did not extend to review of administrative acts. The institution with jurisdiction in such matters was the *Conseil du Contentieux*, an administrative rather than a judicial body.<sup>25</sup>

As elsewhere in French West and Equatorial Africa, France instituted the policy of *assimilation* in French Cameroon. In pursuance of its *mission civilisatrice*<sup>26</sup> France sought to transform the indigenous population into French citizens through the adoption of French culture, language and education.<sup>27</sup> Through that policy, the French perpetuated a system of inequality and discrimination. For instance, prior to 1946, *citoyens* (assimilated indigenes) had some CPR accorded persons of French origin.<sup>28</sup> The system of justice applicable to them was identical to that applied in Metropolitan France in terms

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<sup>19</sup> Carlson Anyangwe, *The Cameroonian Judicial System* (CEPER 1987) 102-103.

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid* 103.

<sup>22</sup> *ibid* 112.

<sup>23</sup> *ibid.*

<sup>24</sup> *ibid.*

<sup>25</sup> *ibid* 102.

<sup>26</sup> The French policy or mission to civilise Africans.

<sup>27</sup> That was the essence of French colonial policy and the approach was adopted throughout French West Africa. See Alice Conklin, 'Colonialism and Human Rights, A Contradiction in Terms? The Case of France and West Africa: 1895-1914' (1998) 103(2) *The American Historical Review* 419; Martin Thomas, *The French Empire Between the Wars: Imperialism, Politics and Society* (Manchester University Press 2005) 54-90.

<sup>28</sup> LeVine, *The Cameroons: From Mandate* (n 13) 99-102

of the courts as well as the penal and criminal procedure codes.<sup>29</sup> On the other hand the *sujets* (unassimilated indigenes) were subjected to the repressive policy of *indégenat*.<sup>30</sup>

Through its application, the *indégenat* undermined any idea of limitation of governmental power as it placed considerable discretionary and unrestrained powers in the administrative officials.<sup>31</sup> They had authority to impose extrajudicial disciplinary sanctions for a wide range of loosely defined offences.<sup>32</sup> It also made it possible for the French to continue the German Policy of forced labour under harsh conditions which the French termed the *covée* and another form of forced labour known as *prestation*.<sup>33</sup> Under *prestation* the natives (males) were obliged to furnish compulsory labour of ten days in a year without remuneration. The *indégenat* was used to punish workers who deserted or farmers who failed to grow items required of them.<sup>34</sup> The labour policies violated the terms of article 4(3) of the Mandate Agreement which required the prohibition of forced or compulsory labour. Subsequently, following concerns raised by the Permanent Mandates Commission<sup>35</sup> the French administration passed a law instituting a commutation of two francs for a day of work but this was done infrequently.<sup>36</sup> So, forced labour persisted, prompting a large number of indigenes to escape to British Cameroons and Rio Muni.<sup>37</sup>

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<sup>29</sup> LeVine, *The Cameroons: From Mandate* (n 13) 50-51.

<sup>30</sup> It has been described as 'the most resented facet' of French discriminatory policies in French Cameroon. See Rubin (n 2) 51.

<sup>31</sup> Rubin (n 2) 51-52, LeVine, *The Cameroons: From Mandate* (n 13) 99-100.

<sup>32</sup> *ibid.* See also Achille Mbembe, *La Naissance du Marquis dans le Sud-Cameroun (1920-1960)* (KARTHALA-CNRS 1996) 142.

<sup>33</sup> LeVine, *The Cameroons: From Mandate* (n 13) 105.

<sup>34</sup> Mbembe, *La Naissance du Marquis* (n 32) 143; Gardinier (n 13) 17.

<sup>35</sup> VI Permanent Mandates Commission (Statement of the Commissioner of the French Republic in Cameroon) 1925, 16 cited in LeVine, *The Cameroons: From Mandate* (n 13) 105-106; Richard Joseph, *Radical Nationalism in Cameroon: Social Origins of the UPC Rebellion* (Oxford University Press 1977) 27-28.

<sup>36</sup> Arrêté of 07 September 1925 (*Rapport du Cameroun* [1925] p. 141 cited in LeVine, *The Cameroons: From Mandate* (n 13) 106.

<sup>37</sup> Joseph, *Radical Nationalism in Cameroun* (n 35) 28. In fact, that response to forced labour was not unique to French Cameroon. Anthony Asiwaju reports incidents of large scale migration of indigenous populations fleeing the harsh labour policies instituted through the *indégenat* in Dahomey (Benin). These populations moved into neighbouring Nigeria as a result of the more tolerant labour policies. A. Asiwaju, 'Law in Africa Borderlands: The Lived Experience of the Yoruba astride the Nigeria-Dahomey Border' in Richard Roberts & Kristin Mann (eds), *Law in Colonial Africa* (Heinemann 1990) 233.

The *indégenat* had portentous repercussions for other CPR of the indigenous population, including freedom of expression, movement and association.<sup>38</sup> Some offences created under the *indégenat* were the offences of circulation of rumours which were likely to disturb public order and seditious utterances.<sup>39</sup> Because the offences in the *indégenat* were loosely defined, it was not clear what statements could be considered seditious or inimical to public order.<sup>40</sup> Further, to ensure a constant supply of labour, a Decree of 1925 was promulgated which prohibited the emigration of Cameroonians without prior authorisation from the Commissioner or an authorised district head.<sup>41</sup> Women were generally forbidden from emigrating from the territory. The French administration defended this policy by arguing that it was to prevent illegal trafficking in women.<sup>42</sup> In 1936, a further circular directed the administration to forbid indigenes from leaving the territory if they had signed a labour contract with a French employer.<sup>43</sup>

In addition, the *indégenat* prevented the participation of indigenes in political activity and in any case there were no local institutions which would have provided that opportunity.<sup>44</sup> The administration did not permit the formation of political associations until the 1930s when it approved the formation of *Union Camerounaise* and *Jeunesse Camerounaise Francaise* (JEUCAFRA) in 1937 and 1938 respectively.<sup>45</sup> The administration's unwillingness to tolerate political opposition was evident in the fact that the above associations were quasi-political associations which were adherents to French rule and propagated the integration of French Cameroon into the French Union.<sup>46</sup> However, two watersheds transformed the legal and political situation.

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<sup>38</sup> Rubin (n 2) 51.

<sup>39</sup> Mbembe, *La Naissance du Marquis* (n 32) 7; LeVine, *The Cameroons: From Mandate* (n 13) 100.

<sup>40</sup> Mbembe, *La Naissance du Marquis* (n 32) 142; LeVine, *The Cameroons: From Mandate* (n 13) 100.

<sup>41</sup> *Décret de 9 Juillet, 1925, Rapport du Cameroun* (1925) 88.

<sup>42</sup> LeVine, *The Cameroons: From Mandate* (n 13) 108-109.

<sup>43</sup> Circular Concerning Native Labour and Movement of Natives, 01 May 1936 cited in Levine, *The Cameroons: From Mandate* (n 13) 109.

<sup>44</sup> Rubin (n 2) 61; Le Vine, *The Cameroons. From Mandate* (n 13) 111.

<sup>45</sup> Le Vine, *The Cameroons. From Mandate* (n 13) 117.

<sup>46</sup> *ibid.*



The first was the Brazzaville Conference in 1944 held at the instance of General de Gaulle to improve Franco-African relations.<sup>47</sup> Resolutions passed at the Conference saw the abolition of the *indégenat* across French colonial Africa<sup>48</sup> and the institution of universal application of the French criminal justice.<sup>49</sup> *Citoyens* were accorded voting rights and in 1951 universal suffrage was extended to non-assimilated indigenes.<sup>50</sup> A Representative Assembly (hereafter ARCAM) was also created for Cameroon but it remained accountable to the French *Conseil d'Etat* which had to veto all its decisions.<sup>51</sup> Trade unions were legalised in 1944 and from then on political associations proliferated.<sup>52</sup> Nevertheless political activity was restricted and the administration did not hesitate to crack down on those organisations that propagated nationalist views.<sup>53</sup> One of such associations which came into frequent conflicts with the administration was the *Union des Populations du Cameroun* (UPC) which advocated for complete independence for French Cameroon and reunification with Southern (British) Cameroons.<sup>54</sup> The administration reacted by issuing emergency decrees which curtailed the activities of the UPC and its members were frequently arrested, detained and tortured.<sup>55</sup> Following prolonged violent altercation with the administration, the UPC was banned and some of its members sought refuge in British Cameroons.<sup>56</sup>

The second watershed was in June 1956 when the French Assembly passed the *Loi Cadres* revolutionising colonial administration in French Africa. In Cameroon, the Territorial Assembly was accorded more powers over territorial affairs although France retained authority over such aspects as defence, civil liberties and education.<sup>57</sup> Moreover

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<sup>47</sup> Edward Mortimer, *France and the Africans: 1944-1960* (Faber and Faber Ltd 1961) 49; Robert Collins, *African History: Western African History* (Markus Wiener Publishers 1997) 117-120. See also Rubin (n 2) 52-53; Chiabi (n 2) 34.

<sup>48</sup> French Government Decree of 08 December 1945 and 20 February 1946. See Le Vine, *The Cameroons. From Mandate* (n 13) 110.

<sup>49</sup> Rubin (n 2) 52-53; Le Vine, *The Cameroons. From Mandate* (n 13) 110.

<sup>50</sup> Rubin (n 2) 54; Le Vine, *The Cameroons. From Mandate* (n 13) 137.

<sup>51</sup> Rubin (n 2) 54.

<sup>52</sup> *ibid* 61. See also Le Vine, *The Cameroons. From Mandate* (n 13) 142-144.

<sup>53</sup> Joseph, *Radical Nationalism in Cameroon* (n 35) 32.

<sup>54</sup> Willard Johnson, *The Cameroon Federation: Political Integration in a Fragmentary Society* (Princeton University Press 1970) 136-140; Rubin (n 2) 63-64.

<sup>55</sup> Le Vine, *The Cameroons: From Mandate* (n 13) 156.

<sup>56</sup> *ibid* 153-160. See also Rubin (n 2) 66-69; Johnson (n 54) 128.

<sup>57</sup> Rubin (n 2) 55; Le Vine, *The Cameroons: From Mandate* (n 13) 156.

provision was made for internal self-government. Legislative elections were held in December 1956 and, in 1957, Andre Marie Mbida was appointed the first Premier of French Cameroon. Meanwhile, the exiled UPC continued to instigate opposition and violence from behind the scenes.<sup>58</sup> Mbida's regime soon fell into disrepute with the indigenous population due to its brutal response to the UPC and his reluctance to endorse a programme for eventual independence.<sup>59</sup> Mbida's intolerance to opposition was illustrated by the arrest and detention of the editor of *L'Opinion au Cameroun*, for publishing articles highly critical of his regime and reminiscent of UPC rhetoric.<sup>60</sup> Owing to immense unpopularity, Mbida was forced to resign in February 1958 paving the way for Amadou Ahidjo to be appointed Premier.<sup>61</sup> It was in that climate of hostility and violence that Ahidjo led French Cameroon to independence in January 1960. Its first Constitution was adopted in October 1960.<sup>62</sup> Before discussing the relevant provisions of that Constitution, the position of Southern Cameroons under British colonial administration will be considered.<sup>63</sup>

## **2.2. Law and Constitutional Politics in Southern Cameroons under British Colonial Administration**

Southern Cameroons was administered as part of the neighbouring British colony of Nigeria.<sup>64</sup> That arrangement was prompted by financial and geographical reasons.<sup>65</sup> It was endorsed by article 9 of the Mandate Agreement<sup>66</sup> which provided *inter alia* that Britain could constitute the territory (Cameroons) into an administrative union or federation with its adjacent territories.

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<sup>58</sup> Le Vine, *The Cameroons: From Mandate* (n 13) 163-166.

<sup>59</sup> Rubin (n 2) 55; Le Vine, *The Cameroons: From Mandate* (n 13) 157, 162-166.

<sup>60</sup> Le Vine, *The Cameroons: From Mandate* (n 13) 164.

<sup>61</sup> *ibid* 166.

<sup>62</sup> Law No. 59/56 of 31 October 1960 on the Constitution of *La République du Cameroun* 1960.

<sup>63</sup> The constitutional legacy of both colonial powers will be considered subsequently from a comparative perspective.

<sup>64</sup> Cameroons under British Administration Order-in-Council No 1621, 1923, art 3.

<sup>65</sup> Ngoh, *Southern Cameroons* (n 2) 4-5.

<sup>66</sup> See (n 8) above.

The laws applicable in Southern Cameroons consisted of the common law, doctrines of equity and the statutes of general application which were in force in England on 01 January 1900.<sup>67</sup> In addition, in 1924 the Nigerian Legal System was extended to Southern Cameroons as a result of which some of its statutes and ordinances became applicable.<sup>68</sup> Similar to the French approach, customary law was retained to the extent that it passed the repugnancy test.<sup>69</sup> Again, it applied exclusively to the native population and had jurisdiction predominantly over private aspects such as land, marriage, divorce and inheritance.<sup>70</sup> Customary law also had limited jurisdiction in criminal matters where the penalties did not exceed six months imprisonment or a fine of £10.<sup>71</sup>

With regards to the administration of justice, the British did not have the two-tier system that differentiated between the assimilated and unassimilated indigenes in French Cameroon. All indigenes were subject to common law oriented criminal and penal procedures and locally enacted legislation. There were also provincial courts in Nigeria which had jurisdiction over indigenes and non-indigenes subject to certain limitations.<sup>72</sup> This did not, however, preclude discriminatory and arbitrary practices against the indigenous populations. For instance, the provincial courts had jurisdiction to impose lashes as penalties for some offences.<sup>73</sup> Further, the German policy of forced labour was initially retained although it was abolished due in part to high death rates and the self-motivation of the indigenes who required no compulsion to work.<sup>74</sup> Labour became

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<sup>67</sup> Southern Cameroons High Court Law 1955 (hereafter SCHCL), s 11.

<sup>68</sup> British Cameroons Ordinance No.5 of 1924; Rubin (n 2) 73. See Anthony N. Allott, *Judicial and Legal Systems in Africa* (Butterworths 1962) 76-78.

<sup>69</sup> SCHCL 1955, s 27(1). The caveat to the application of customary law was that, it was not repugnant to natural justice, equity and good conscience, nor incompatible with any law being enforced. Today customary law has a very limited application.

<sup>70</sup> SCHCL, s 27(1).

<sup>71</sup> Ngoh, *Southern Cameroons* (n 2) 8. Native Courts were established to apply customary law in Southern Cameroons by virtue of the Nigerian Native Courts Ordinance of 1914.

<sup>72</sup> For instance custodial sentences exceeding six months or fines exceeding £50 required confirmation from the Governor of Nigeria or with regard to Southern Cameroons in particular, confirmation from the Chief Justice. See Anyangwe (n 19) 70-71; Ngoh, *Southern Cameroons* (n 2) 8.

<sup>73</sup> Ngoh, *Southern Cameroons* (n 2) 8.

<sup>74</sup> Mark Delancey, *Cameroon: Dependence and Independence* (Westview Press 1989) 18. Harsh working condition and inadequate medical facilities also contributed to high death rates. The senior British officer in Southern Cameroons reported that in 1918 about twenty percent of the plantation workers died from influenza.

voluntary and conditions were considerably improved, attracting migrant workers from Nigeria and French Cameroon.<sup>75</sup>

In Southern Cameroons as elsewhere in British colonial Africa, the system of administration applicable was indirect rule. This system was characterised by the use of traditional authority (chiefs and *fons*)<sup>76</sup> as instruments through which the local British administrators implemented their policies.<sup>77</sup> At the helm of the territorial administration of Southern Cameroons was the Governor-General of Nigeria who was responsible for (amongst others) governance, administration of justice, revenue and maintenance of law and order.<sup>78</sup> The territory was divided into administrative divisions headed by a Resident, below whom were Divisional Officers and District Officers. The administration was represented at the local levels by chiefs or *fons*.<sup>79</sup> The policy of indirect rule worked better in the ‘Grassfield’<sup>80</sup> regions of Southern Cameroons which already had centralised authorities.<sup>81</sup> Indirect rule was not particularly ideal in the forest regions which were loosely organised and the British authorities sometimes had to raise artificial chiefs or use former ‘German created chiefs’ where none was immediately apparent.<sup>82</sup> As a result, some of the artificial chiefs were rejected by the indigenous population.<sup>83</sup> The native authorities had responsibility for the efficient running of the administration in their jurisdiction, particularly with respect to the maintenance of law and order, collection of taxes and the provision of elementary health and education facilities.<sup>84</sup> In spite of the powers given to native authorities, the administration enacted stringent laws like the Deposed Chief Removal Ordinance of 1929 to deal with uncooperative chiefs. That law

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<sup>75</sup> Le Vine, *The Cameroons: From Mandate* (n 13) 108, 196-197; Delancey (n 74) 18, 36.

<sup>76</sup> ‘Fon’ is the terminology used to describe traditional leaders (chiefs) in the North West Region of Cameroon.

<sup>77</sup> Ngoh, *Southern Cameroons* (n 2) 6.

<sup>78</sup> Nigeria Protectorate Order-in-Council 1922, art 4. See also Anyangwe (n 19) 57.

<sup>79</sup> Ngoh, *Southern Cameroons* (n 2) 7. See also Bongfen Chem-Langhee, ‘The Origins of the Southern Cameroons House of Chiefs’ (1983) 16(4) *The International Journal of African Historical Studies* 653, 655-656.

<sup>80</sup> A term used to describe areas comprising the Western Highlands from Widekum to the Bamenda Plateau in the Northwest Region. ‘Grassfield’ is adopted from the open vegetational features characteristic of land in that area. See John Mbaku, *Culture and Customs of Cameroon* (Greenwood Press 2005) 10-12.

<sup>81</sup> Ngoh, *Southern Cameroons* (n 2) 9. See also Chem-Langhee (n 79) 655-656.

<sup>82</sup> Ngoh, *Southern Cameroons* (n 2) 9.

<sup>83</sup> *ibid.*

<sup>84</sup> *ibid* 6-9.

authorised the governor to order a deposed chief to leave his area of jurisdiction or any other parts of the territory within a specific time.<sup>85</sup> Failure to comply with the order resulted in the incarceration of the deposed chief.<sup>86</sup> That law became an effective mechanism for consolidating colonial administration as the governor's orders were not subject to appeal.<sup>87</sup>

During the colonial era, the practice of separation or limitation of governmental powers was uncommon. Administrative officials such as the Resident and Divisional Officers presided over provincial courts.<sup>88</sup> The Governor, the highest administrative official, was given 'reserve power of legislation' by certification.<sup>89</sup> This implied that, if the Legislative Council failed to pass a Bill or Motion, the Governor could still declare that it had effect if he considered it expedient or in the interest of public order or good governance.<sup>90</sup> However, he was required to inform the British government immediately that power was used and provide reasons for his decision.<sup>91</sup> Again, a member of the Council could raise an objection to the Governor's decision which had to be reported to the Secretary of State.<sup>92</sup> Nevertheless, that did not diminish the discretionary nature of the power as the safeguards were not always sufficient to prevent abuse. Moreover, the Governor was vested with other excessive powers such as powers to dismiss African members in the administration and powers to dethrone traditional chiefs.<sup>93</sup> In fact, the colonial administration was fiercely criticised by Nigerian and Southern Cameroonian politicians who staged massive campaigns to protest against (amongst others) the discretionary administrative powers.<sup>94</sup>

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<sup>85</sup> Colonial Office 657/14, The Deposed Chiefs Removal Ordinance, No.4 of 1929 cited in Bonny Ibhawoh, 'Stronger than the Maxim Gun Law: Human Rights and British Colonial Hegemony in Nigeria' (2002) 72(1) *Journal of the International African Institute* 55, 66.

<sup>86</sup> Ibhawoh (n 85) 60.

<sup>87</sup> *ibid* 66.

<sup>88</sup> Ngoh, *Southern Cameroons* (n 2) 8.

<sup>89</sup> Nigerian (Legislative Council) Order in Council 1946, art 26.

<sup>90</sup> *ibid*. See also Ben Nwabueze, *A Constitutional History of Nigeria* (Longman 1982) 45-46.

<sup>91</sup> Nigerian (Legislative Council) Order in Council 1946, art. 26.

<sup>92</sup> *ibid* art 26(3).

<sup>93</sup> Text to (n 85).

<sup>94</sup> Ngoh, *Southern Cameroons* (n 2) 45-55.

The conditions for securing judicial independence were not ideal as seen above with the concurrent exercise of administrative and judicial powers by executive officials. Moreover, the Chief Justice who was head of the colonial judiciary together with puisne judges and magistrates held office during ‘Her Majesty’s pleasure’.<sup>95</sup> However, Carlson Anyangwe states that some measure of judicial independence could be envisaged.<sup>96</sup> The Chief justice for instance had scope for independence given that he was neither a member of the executive nor the legislature. Further, although he was appointed by the Governor, his appointment was contingent upon consultation with and affirmation by the Colonial Secretary.<sup>97</sup> With regard to other judges, their appointment was also contingent on recommendation by the Chief Justice and consultation with the Colonial Secretary.<sup>98</sup>

In terms of rights, Southern Cameroonians were accorded some CPR, albeit very circumscribed. For instance, although the indigenous population was represented in the Legislative Council, they were vested with no more than advisory status.<sup>99</sup> Political organisations were permitted, although Nigeria was more politically advanced than Southern Cameroons.<sup>100</sup> The colonial administration while allowing a degree of political freedom was cautious not to allow the propagation of extremist nationalist views which had the potential of provoking violent outbursts.<sup>101</sup> Colonial responses to nationalist activities were often in the form of press censorship, imposition of heavy libel fines<sup>102</sup> and banning of press organisations.<sup>103</sup> A host of legislations were enacted for those purposes.<sup>104</sup> The Seditious Offences Act of 1909 criminalised the circulation of statements or rumours which had the potential to inhibit the performance of a colonial

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<sup>95</sup> Anyangwe (n 19) 83.

<sup>96</sup> *ibid.*

<sup>97</sup> *ibid* 83.

<sup>98</sup> *ibid* 84.

<sup>99</sup> Ngoh, Southern Cameroons (n 2) 45-55.

<sup>100</sup> Nicholas Ofiaja, *Stability and Instability in Politics: The Case of Nigeria and Cameroon* (Vantage Press 1979) 53; Le Vine, *The Cameroons From Mandate* (n 13) 199.

<sup>101</sup> Ibhawoh (n 85) 69-73; Le Vine, *The Cameroons. From Mandate* (n 13) 199.

<sup>102</sup> Ibhawoh (n 85) 69-73.

<sup>103</sup> Ofiaja (n 100) 53; Le Vine, *The Cameroons. From Mandate* (n 13) 199.

<sup>104</sup> For instance the Criminal Code of the Eastern Region of Nigeria 1942, which prohibited the importation of newspapers or publications, deemed to be detrimental to the interest of the country. There were no predetermined factors which could be considered detrimental to the interest of the country. Consequently, this provided the colonial administration discretion to accord a wide interpretation which would have included protest against colonial policies. Chris Ogbondah & Emmanuel Onyedike ‘Origins and Interpretation of Nigerian Press Laws’ (1991) 5 *Africa Media Review* 63, 63-64.

officer's duties.<sup>105</sup> This was an attempt to protect them from criticism which had begun to cause the colonial administration concerns about public security.<sup>106</sup>

Politically, Southern Cameroons was largely uneventful until after 1940.<sup>107</sup> Its status as part of Nigeria meant that Britain's administrative focus was largely on Nigeria. Until 1940 the territory had no representative in the Nigerian Legislative Council (NLC) which catered for Nigeria and the Cameroons.<sup>108</sup> In 1939 a trade union organisation, the Cameroon Welfare Union (CWU) successfully petitioned the colonial authorities demanding Southern Cameroons representation in the NLC.<sup>109</sup> Consequently, in 1940 Chief Manga Williams and the senior colonial administrative authority in Southern Cameroons were appointed as the territory's representatives in the NLC.<sup>110</sup> Subsequently in 1946 when Southern Cameroons became a trust territory of the United Nations, a new constitution, the Richards Constitution, was drafted for Nigeria and the Cameroons. This improved Southern Cameroons position within Nigerian political administration.<sup>111</sup> The Constitution divided Nigeria into three regions, incorporating Southern Cameroons administratively into the Eastern Region with increased representation in the Eastern Regional House of Assembly.<sup>112</sup> However, it did not prevent financial and administrative subordination of Southern Cameroons which prompted the latter's politicians to continue to press for autonomous status.<sup>113</sup> In 1954 Southern Cameroons was granted quasi-federal status with a Legislative Assembly and an Executive Council but continued to be linked to the Nigerian Federal Legislature and administration.<sup>114</sup>

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<sup>105</sup> Seditious Offences Act 1909, ss 3 & 5.

<sup>106</sup> Ibhawoh (n 85) 73.

<sup>107</sup> S. O. Okafor, *Indirect Rule: The Development of Central Legislature in Nigeria* (Nelson Africa Ltd 1981) 158. See also Ofiaja (n 100) 50.

<sup>108</sup> Ngoh, *Southern Cameroons* (n 2) 10.

<sup>109</sup> *ibid* 12.

<sup>110</sup> *ibid*.

<sup>111</sup> *ibid* 41-48.

<sup>112</sup> *ibid* 58. See also Nwabueze (n 90) 46-48.

<sup>113</sup> Ngoh, *Southern Cameroons* (n 2) 61.

<sup>114</sup> The Littleton Constitution of 1954. See also Nigerian Constitution, HL Deb 10 February 1954, vol 185 cols 795-7; Ngoh, *Southern Cameroons* (n 2) 87-88.

In 1960 Nigeria gained independence as a result of which Southern Cameroons was administratively separated from it.<sup>115</sup> A Constitution, the Southern Cameroons (Constitution) Order-in-Council 1960 was also adopted to govern it until independence.<sup>116</sup> Another consequence was the withdrawal of Nigerian troops from Southern Cameroons which had relied solely on Nigeria for military assistance. This was of great concern to the British due to the breakdown of law and order in the neighbouring newly independent *République du Cameroun* (hereafter *La République*).<sup>117</sup> Ahidjo's brutal response to political opposition led to a state of anarchy in *La République* which the British feared would spread to Southern Cameroons. With Nigeria now fully independent, Britain's attention turned to the future of the Cameroons. In Southern Cameroons, the leaders were undecided about their aspirations for the future of the territory.<sup>118</sup> While the Premier was in favour of continued trusteeship until such a time as Southern Cameroons would be ready for independence and possibly reunification with *La République*, the leader of the opposition pressed for integration with Nigeria.<sup>119</sup> Prior to 1959, Britain was in fact prepared to continue the trusteeship for another five years as requested by the Premier of Southern Cameroons.<sup>120</sup> It even gave consideration to the fact that all possible alternatives be explored including integration of Northern and Southern Cameroons to form a single entity.<sup>121</sup> This position changed following the publication of the Philipson Financial Report commissioned by the Southern Cameroons' government.<sup>122</sup> That report revealed that Southern Cameroons would not be economically viable, hence could not operate on its own without assistance<sup>123</sup> to which the British were not inclined to commit.<sup>124</sup> For those reasons the option of continued trusteeship was frustrated. Although Britain insisted that the consequences of the different options for

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<sup>115</sup> Nwabueze (n 90) 59-61.

<sup>116</sup> The provisions of that Constitution are discussed in the next section.

<sup>117</sup> Southern Cameroons: Administration, HC Deb 21 July 1960, vol 627, cols 713-4.

<sup>118</sup> Southern Cameroons: Constitution, HC Deb 11 June 1959, vol 606, cols 1153-4. See also Piet Konings & Francis Nyamnjoh, *Negotiating an Anglophone Identity: A Study of the Politics of Recognition* (BRILL 2003) 22-36; Ngoh, *Southern Cameroons* (n 2) 122-132.

<sup>119</sup> Konings & Nyamnjoh (n 118) 22-36; Ngoh, *Southern Cameroons* (n 2) 122-132.

<sup>120</sup> Southern Cameroons: Constitution, HC Deb 11 June 1959 vol, 606, cols 1153-4.

<sup>121</sup> United Kingdom and Nigeria (Ministerial Discussions), HC Deb 19 May 1960, vol 623, cols 1494-8.

<sup>122</sup> Sydney Phillipson, *Financial and Administrative Consequences to the Southern Cameroons of Separation from the Federation of Nigeria, 1959* (Lagos: Government Printer 1959).

<sup>123</sup> *ibid* 8-10.

<sup>124</sup> Ngoh, *Southern Cameroons* (n 2) 34, 83-84; Johnson (n 54) 100, 104-107.



independence be explained fully to the electorate, it maintained that the United Nations (UN) alone had the mandate to decide which options were to be presented to the electorate.<sup>125</sup> The UN thus resolved that Southern Cameroons could only gain independence by integrating with Nigeria or the newly independent *République du Camroun*.<sup>126</sup> Faced with these choices in a UN conducted plebiscite in February 1961, Southern Cameroonians voted to gain independence through reunification with *La République*.<sup>127</sup> In October 1961, the two territories were formally reunited to form the Federal Republic of Cameroon. This marked the beginning of Cameroon's post-independence constitutional evolution.

Before examining the constitutional developments after 1961, it will be helpful at this stage to discuss the constitutional legacy in both Southern Cameroons and *La République du Cameroun* prior to 1961.<sup>128</sup>

### **3. COMPARATIVE CONSTITUTIONALISM: THE BRITISH AND FRENCH COLONIAL LEGACY IN CAMEROON.**

This section will examine substantive provisions of the Southern Cameroons Constitution (SCOC)<sup>129</sup> and the Constitution of *La République du Cameroun* (CLRC).<sup>130</sup> The analysis will be based on the framework of constitutionalism outlined in Chapter 1, captured under four headings; CPR, separation of powers and checks and balances, judicial independence and judicial review.

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<sup>125</sup> *Southern Cameroons: Future*, HC Deb 09 April 1959, vol 603, cols 32-3W; United Kingdom and Nigeria (Ministerial Discussions), HC Deb 19 May 1960, vol 623, cols 1494-8.

<sup>126</sup> Delancey (n 74) 36; Ngoh, *Southern Cameroons* (n 2) 101-106.

<sup>127</sup> Delancey (n 74) 144; Rubin (n 2) 107, Le Vine, *The Cameroons: From Mandate* (n 13) 211-212; Ngoh, *Southern Cameroons* (n 2) 152.

<sup>128</sup> Text to (n 1).

<sup>129</sup> Southern Cameroons (Constitution) Order-in-Council 1960 (SCOC).

<sup>130</sup> Law No. 59-56 of 31 October 1960 on the Constitution of *La République du Cameroun* 1960 (hereafter CLRC).

### 3.1. Civil and Political Rights

The two Constitutions were similar to the extent that they recognised and guaranteed a plethora of CPR. These included the rights to life, personal liberty and security, private and family life, assembly and association, freedom of conscience and movement and freedoms from torture and inhumane treatment and discrimination.<sup>131</sup> The Constitution of *La République* went further to affirm its attachment to the fundamental freedoms enshrined in the United Nations Charter and the Universal Declaration of Human Rights.<sup>132</sup> However, there were material differences with regards to the substantive provisions. In the Constitution of *La République* CPR were stated in very broad terms in the Preamble. Moreover, the Preamble was not an integral part of the Constitution therefore the justiciability of CPR was uncertain.<sup>133</sup> Not unexpectedly, as is the case with the French Constitution,<sup>134</sup> the Constitution of *La République* specifically entrenched the right to personal liberty and entrusted the judiciary as ‘guardian’ of personal liberty with the duty to ensure the respect of that right pursuant to conditions provided by law.<sup>135</sup> On the other hand, a distinctive feature of the Southern Cameroons Constitution was the entrenchment of CPR.<sup>136</sup> They were specifically enumerated in elaborate form and their provisions followed closely international standards.<sup>137</sup>

### 3.2. Separation of Powers and Checks and Balances

The two Constitutions were also similar to the extent that they reflected the tripartite division of governmental power between the executive, legislature and the judiciary. Beyond that, there were fundamental differences in the nature of separation, the scope of their authority and the method of their accountability.

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<sup>131</sup> SCOC, Chapter VII and CLRC, Preamble

<sup>132</sup> CLRC, Preamble.

<sup>133</sup> *SGTE*, Arrêt No. 68 CFJ/CAY of 30 August 1969, declaring the Preamble not to be justiciable.

<sup>134</sup> Constitution of the Fifth French Republic 1958 (French Constitution) art 66.

<sup>135</sup> CLRC, art 43.

<sup>136</sup> See generally SCOC, Chapter VII (on Fundamental Rights).

<sup>137</sup> In particular the section on the right to liberty and security (SCOC, s 75) bore great similarity with the equivalent provision in the European Convention on Human Rights (art 5).

In *La République* there was a distinct separation of powers between the executive, the legislature and the judiciary. The Constitution created a semi-presidential system (in line with what existed in France) headed by the President as Head of State and Prime Minister (PM) as Head of Government.<sup>138</sup> It thus created an additional level of separation of executive power. Appointed by the President,<sup>139</sup> the PM was responsible for the implementation of government policy, exercised regulatory powers and controlled the enforcement of laws, regulations and judicial decisions.<sup>140</sup> The President however, was vested with greater powers than the PM. The former was vested with law making powers in the areas which did not specifically fall under the jurisdiction of the legislature.<sup>141</sup> He was responsible for the promulgation of organic laws, appointment of government officials and military personnel as well as being commander in chief of the army.<sup>142</sup> He was also vested with powers to declare states of siege or emergencies and to rule during those periods of exception single handed except that prior to the declaration of a state of siege, he was required to consult Parliament.<sup>143</sup>

Although both the executive and the legislature were recognised in the Constitution as ‘governmental powers’,<sup>144</sup> the legislature seemed to have been undermined by the circumscription of its legislative capacity. Thus, Parliament was vested with powers to make laws in areas specifically enumerated in the Constitution. These included fundamental rights, the civil and criminal system, civic duties of citizens, civil status, nationality, the property regime and organisation of the political, administrative, financial, economic, judicial and educational system.<sup>145</sup> Beyond these areas, the President reserved powers to legislate by decree or ordinance.<sup>146</sup> Moreover, the PM could legislate by ordinances in those areas reserved to the legislature after acquiring the President’s

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<sup>138</sup> CLRC, arts 11 & 21.

<sup>139</sup> CLRC, art 14.

<sup>140</sup> CLRC, arts 21, 22 & 25.

<sup>141</sup> CLRC, art 24.

<sup>142</sup> CLRC, arts 14, 15, 16, 17, 34

<sup>143</sup> CLRC, art 20.

<sup>144</sup> Indicating that both were co-equal as opposed to the judiciary which was referred to as an authority. See below, Section 3.3.

<sup>145</sup> CLRC, art 23.

<sup>146</sup> CLRC, art 24.

consent and authorisation from Parliament, where such regulations were necessary for the fulfilment of government policies.<sup>147</sup>

In terms of accountability, both government and Parliament could be held accountable.<sup>148</sup> In case of disagreement between Parliament and the government arising from a motion of censure or a vote of no confidence the government was dissolved as of right and the President was vested with powers to dissolve Parliament.<sup>149</sup> The Constitution however did not provide any mechanism for the mutual accountability of the President.

In Southern Cameroons, the Constitution created a complex parliamentary system of government with a bicameral legislature comprising of a House of Assembly and a House of Chiefs, a Premier, a Cabinet, an Executive Council<sup>150</sup> and a Commissioner, representing Her Majesty.<sup>151</sup> There was no distinct separation of executive and legislative powers. The Premier, Cabinet and Executive Council which exercised executive powers were also part of the legislature. The Premier and Cabinet were appointed from the House of Assembly<sup>152</sup> while the Executive Council was composed of the Cabinet, the Deputy Commissioner, the Attorney General and the Financial Secretary.<sup>153</sup> The last three officials were also ex-officio members of the House of Assembly.<sup>154</sup> While the Constitution granted specific legislative and executive powers to the corresponding institutions, the nature of their composition implied that executive and legislative powers to an extent were exercised by the same personalities. It may be argued for instance that in the case of the National Assembly, the elected twenty six members<sup>155</sup> who formed the majority of its membership pre-empted usurpation of powers by the executive. Nevertheless, such complex institutional arrangements may not have been ideal in the Southern Cameroons context which at the time had little experience in self- governance.

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<sup>147</sup> CLRC, art 25.

<sup>148</sup> CLRC, art 35.

<sup>149</sup> CLRC, art 36.

<sup>150</sup> The Executive Council was composed of the Cabinet, the Deputy Commissioner, the Attorney General and the Financial Secretary. See SCOC, s 34(2)(a)(b).

<sup>151</sup> SCOC, s 2

<sup>152</sup> SCOC, s 33(2)(3).

<sup>153</sup> SCOC, s 34(2)(a)(b).

<sup>154</sup> SCOC, s 7(2) (a).

<sup>155</sup> SCOC, s 7(2)(b)

The most controversial figure was the Commissioner who was vested with discretionary powers to (amongst others) dissolve Parliament by proclamation,<sup>156</sup> appoint the Premier<sup>157</sup> and his ministers (acting in accordance with the advice of the Premier),<sup>158</sup> convene and preside at Executive Council meetings.<sup>159</sup> He also had powers to make decisions on matters within his authority where in his judgment an urgent action was required or Her Majesty's service would sustain material prejudice.<sup>160</sup> The Commissioner exercised reserved legislative authority to declare enforceable any bill which was not passed by Parliament where he deemed that necessary in the interest of public policy, public faith and good governance.<sup>161</sup> He was also vested with powers to make laws for the peace, order and good government in any matter with respect to which the Federal Legislature of Nigeria had jurisdiction prior to 1960 or with regard to the application in Southern Cameroons of any treaty, convention, agreement or decision between Her Majesty's Government and any other government or international organisation.<sup>162</sup>

The Constitution nevertheless attempted to provide some measure of accountability. A bill passed by Parliament could not become law until assented to by the Commissioner on behalf of Her Majesty.<sup>163</sup> Where a bill was not assented to, the Commissioner was required to submit it to Her Majesty for the latter's assent.<sup>164</sup> With regards to the Commissioner, his legislative powers were contingent upon the advice and consent of the House of Assembly<sup>165</sup> and a law made in exercise of those powers could be invalidated by Her Majesty through the Secretary of State.<sup>166</sup> Moreover, he was under an obligation to report the exercise of his reserved legislative power to the Secretary of State and any member of the House of Assembly could record their objection with the Secretary of

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<sup>156</sup> SCOC, s 31(1)

<sup>157</sup> SCOC, s 33(1)

<sup>158</sup> SCOC, s 33(2)

<sup>159</sup> SCOC, s 35(1) (2).

<sup>160</sup> SCOC, s 41(2).

<sup>161</sup> SCOC, s 23(1).

<sup>162</sup> SCOC, s 32(2)(a)(b).

<sup>163</sup> SCOC, s 24(1)

<sup>164</sup> SCOC, s 24(2).

<sup>165</sup> SCOC, s 32(1).

<sup>166</sup> SCOC, s 25(1).

State.<sup>167</sup> The Commissioner's powers were further limited to the extent that any other powers (not classified as discretionary) were to be exercised in consultation with the Executive Council.<sup>168</sup> However, that provided only a weak form of oversight at the domestic level as the Commissioner's actions were not subject to domestic judicial review.<sup>169</sup> He was only answerable to Her Majesty<sup>170</sup> and was required to report to Her Majesty through a Secretary of State, at any time that a decision was taken in contravention of the responsibility to consult the Executive Council.<sup>171</sup>

### 3.3. Judicial Independence

Judicial independence received some recognition in both Constitutions although the extent differed as well as the status of the judiciary vis-à-vis the other powers. In *La République* the judiciary was not accorded the same status as the legislature or the executive. While the former were referred to in terms of powers, the judiciary was an authority whose independence was guaranteed by the President of the Republic.<sup>172</sup> The President controlled the judicial career through his powers to appoint and discipline judges. He was assisted in this regard by the Higher Judicial Council (HJC)<sup>173</sup> which was presided over by the President himself.<sup>174</sup> In effect, the President controlled both the judiciary and the HJC. Nevertheless, the Constitution attempted to provide scope for independence through the French principle of '*inamovibilité*' which meant that judges were to enjoy a fixed term until retirement.<sup>175</sup> Other relevant organisational aspects relating to judicial independence were to be regulated by subsequent legislation.<sup>176</sup>

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<sup>167</sup> SCOC, s 23(2)(3).

<sup>168</sup> SCOC, s 40 (2) (3).

<sup>169</sup> SCOC, s 3

<sup>170</sup> SCOC, s 6.

<sup>171</sup> SCOC, s 4(a).

<sup>172</sup> CLRC, art 41. Having been modelled after the French Constitution this pattern seemed inevitable. The judiciary in France today is still referred to as an authority. See French Constitution, art 64.

<sup>173</sup> Or *Conseil Supérieur de la Magistrature* named after the equivalent French institution. Cf French Constitution, art 64.

<sup>174</sup> CLRC, art 41.

<sup>175</sup> *ibid.*

<sup>176</sup> CLRC, art 41.

In Southern Cameroons, the Constitution dealt more elaborately with the judiciary and provided greater scope for judicial independence. Appointments to the judiciary were made by Her Majesty acting on nominations made by the Commissioner and confirmed by the Secretary of State.<sup>177</sup> Security of tenure was assured in at least two ways. Firstly, the age of retirement was specifically stated. Thus, a judge could only retire after attaining the age of 63.<sup>178</sup> Secondly, removal from office was contingent only upon 'misbehaviour' of the judge or health issues which rendered the judge incapable of discharging his duties.<sup>179</sup> The process to determine a judge's removal involved at first a recommendation from the Commissioner to a special tribunal. The decision of the tribunal was then referred to the Judicial Committee of the Privy Council and then to Her Majesty.<sup>180</sup> This process potentially inhibited any arbitrary action by the Commissioner. Judicial independence was further enhanced by charging the remuneration of judges to a consolidated fund, with specific provision not to alter their salaries to their disadvantage.<sup>181</sup>

### **3.4. Judicial Review**

The failure to demonstrate a firm commitment to CPR in the Constitution of *La République* was also reflected in the absence of a mechanism to control the constitutionality of laws. On the other hand, in Southern Cameroons, the High Court was vested with jurisdiction to review legislation on CPR to determine conformity with the Constitution.<sup>182</sup> By vesting that power in the High Court, ordinary citizens could challenge the constitutionality of laws which violated their rights. In fact, this practice already existed prior to 1960 when Southern Cameroons was still administered as part of Nigeria. The High Court was given jurisdiction to rule on applications where the constitutionality of a law infringing on Schedule VI (on Fundamental Rights) of the

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<sup>177</sup> SCOC, s 51(1).

<sup>178</sup> SCOC, s 53(1).

<sup>179</sup> SCOC, s 53(2).

<sup>180</sup> SCOC, s 53(3) (4).

<sup>181</sup> SCOC, s 58 and 63.

<sup>182</sup> SCOC, s 86(1).

Nigerian Constitution was being challenged.<sup>183</sup> That practice was affirmed in *Alawoyin v. Attorney General, Northern Region*<sup>184</sup> where the Court stated that it was its duty to determine whether a law was inconsistent with the provisions on fundamental rights, as such inconsistencies inhibited their effective enforcement.<sup>185</sup> A restatement of the High Court's jurisdiction in that respect in the Southern Cameroons Constitution could be seen as a means of preserving a practice recognised in that part of the territory.

From the foregoing review, it can be seen that both the British and French colonial legacies reflected some fundamental principles of constitutionalism (as discussed in Chapter 1) and therefore provided some foundation for the protection of CPR. However, they differed significantly in the recognition granted those rights and the institutional structures for their realisation. The British colonial legacy accorded greater significance to CPR and their enforceability potentially reinforced through judicial review of legislation by a judiciary with greater scope for independence and accessibility. However, it demonstrated significant weaknesses with regards to the accountability and separation of executive and legislative powers.

On the other hand, the French colonial legacy demonstrated a feeble guarantee of CPR, the enforceability of which was further undermined by uncertainty as to their constitutional status, the absence of judicial review of legislation and a judiciary whose independence was not sufficiently guaranteed. Nevertheless, its strength could be found in its distinct separation of powers and the additional separation of executive powers although it was hampered by the absence of mechanisms for presidential accountability.

What was also evident in both Constitutions was the absence of some form of adaptation to reflect the context of the two Cameroonian territories. With the exception of the House of Chiefs in Southern Cameroons, both Constitutions failed to give sufficient recognition to indigenous institutions or principles of governance which had been part of the lived

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<sup>183</sup> Nigerian (Constitution) Order-in-Council, ss 244 & 245.

<sup>184</sup> *Alawoyin v. Attorney General, Northern Region*, Suit No. Z/22/1959 also discussed in (1960) 4(2) *Journal of African Law* 117-123.

<sup>185</sup> See also *Dahiru Cheranci v. Alkali Cheranci*, Suit No. K/M26/1959, discussed in (1960) 4(2) *Journal of African Law* 115-117.



experiences of Cameroonians prior to colonialism. They also failed to take account of the particular historical, socio-political and economic circumstances. Firstly, the history of colonial authoritarianism was a potent model likely to influence the new Cameroonian leaders. Secondly, the territories had brief experiences of self-governance and therefore the complex structures they were bequeath with were not fully mastered to make them work for the territories. They did not take account of the fact that the territories were composed of diverse ethnic groups whose coherence had been maintained by colonial authoritarianism. How were Cameroonian authorities to apply the new structures to maintain coherence and stability without reverting to the colonial experience replete with deprivation of CPR? Moreover, the relatively underdeveloped state of the economies at independence provided yet another reason to question if the new governance structures could play a positive role in delivering sustainable economic development in Cameroon without government authorities arbitrarily suspending CPR as rationale for economic development. In *La République* for instance, the centralisation of executive power provided President Ahidjo with the means to continue the authoritarian regime inherited from the French and to suppress dissent from opposition and the UPC in particular, in the guise of maintaining stability, unity and promoting economic development.<sup>186</sup>

Having examined the constitutional legacies of the British and French, the next section will discuss further their developments in the post-independence period.

#### **4. POST INDEPENDENCE CONSTITUTIONAL DEVELOPMENTS: THE CONSTITUTIONAL EVOLUTION OF CAMEROON.**

The major post-independence constitutional developments occurred in 1961, 1972 and 1996. The 1961 and 1972 developments will be discussed independently to highlight the relevant changes as they relate to constitutionalism and CPR. The 1996 Constitution is the subject of subsequent chapters, given that it is the Constitution under which CPR are currently enforced. Nevertheless, a prelude to its adoption is provided to lay the groundwork for discussions in subsequent chapters.

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<sup>186</sup> Abel Eyinga, 'Government by State of Emergency' in Richard Joseph (ed), *Gaullist Africa: Cameroon under Ahmadou Ahidjo* (Fourth Dimension Publishers 1978) 106.

#### 4.1. The Federal Constitution of 1961 and the Gaullist Legacy

Prior to reunification of the two Cameroonian territories in October 1961, it was expected that their representatives would address the issue of a constitution governing the entire union.<sup>187</sup> This was a complex task given that both territories had over forty years of divergent colonial history and it was important to achieve internal coherence without excessive disruption of existing subsystems. In July 1961, a constitutional conference was held in Foumban with the aim of drafting a constitution.<sup>188</sup>

At the conference, the proposals from the delegation representing the former Southern Cameroons reflected a desire to adhere to their British colonial heritage.<sup>189</sup> They advocated for a loose federation, a ceremonial executive head of state with limited powers and the requirement to act with his ministers (who in turn would be responsible to parliament), the entrenchment of and specific provisions for the protection of fundamental rights, vesting ordinary courts with jurisdiction to review the constitutionality of laws, retention of the House of Chiefs and the separate legal systems.<sup>190</sup> However, their counterparts from *La République* had different ideas. With the exception of the last two proposals, the others were rejected by President Ahidjo who sought to consolidate his existing centralised executive powers.<sup>191</sup> Ahidjo rejected the proposals for a loose federation on the basis that it would make the government unstable.<sup>192</sup> He was also influenced by the innate fear of secession of the former Southern Cameroons.<sup>193</sup>

Ahidjo's success in suppressing the Southern Cameroons proposals has been attributed to a number of factors.<sup>194</sup> Firstly, he did not conceal the fact that both Southern Cameroons

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<sup>187</sup> HC Deb, 01 August 1961, vol 645, cols 1332-51.

<sup>188</sup> Johnson (n 54) 183; Ngoh, *Southern Cameroons* (n 2) 156-163.

<sup>189</sup> Rubin (n 2) 11-114; Johnson (n 54) 171-172.

<sup>190</sup> *ibid*

<sup>191</sup> *ibid*. See also Ngoh, *Southern Cameroons* (n 2) 159-164.

<sup>192</sup> Ngoh, *Southern Cameroons* (n 2) 160.

<sup>193</sup> *ibid*.

<sup>194</sup> *ibid* 159-164. See also Rubin (n 2) 113-114; Johnson (n 54) 184.

and *La République* were entering into the negotiations as unequal powers.<sup>195</sup> On the one hand, *La République* was an independent sovereign state ten times the geographical size of its counterpart, whereas, Southern Cameroons was a territory with no independent international status.<sup>196</sup> Secondly, Ahidjo's delegation came prepared with a draft constitution, whereas the Southern Cameroons delegation only had outlines and disagreed amongst its delegates as to their objectives and underlying concepts in relation to the federation.<sup>197</sup> Thirdly, the Southern Cameroons delegation had little time to produce its own proposals on the basis of what had been presented by the Ahidjo delegation.<sup>198</sup> Thus, Ahidjo was able to use these limitations to push his constitution through.

The Foumban Constitutional Conference culminated in the adoption of the Federal Constitution of 1961 which created a federal republic consisting of two federated states - East and West Cameroon representing respectively the former *République* and Southern Cameroons.<sup>199</sup> It is significant to note that the 1961 Constitution was not a newly drafted constitution. It was an amended version of the 1960 Constitution of *La République* with adaptations to accommodate the Federation.<sup>200</sup> Thus began another form of colonisation as the imposition of the 1960 Constitution of *La République* on the Federation implied that the former Southern Cameroons, now West Cameroon had moved from one colonial

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<sup>195</sup> *ibid.*

<sup>196</sup> Though Southern Cameroons had been separated from Nigeria, it still remained a trust territory of the UN. See Ahmadou Ahidjo, 'Contribution to National Construction' (1964) *Paris: Presence Africaine* 23. See also Ngoh, *Southern Cameroons* (n 2) 160; Ndiva Kofele-Kale, 'Ethnicity, Regionalism and Political Power: A Post-mortem of Ahidjo's Cameroon' in M. Schatzberger & W. Zartman (eds), *The Political Economy of Cameroon* (Praeger 1986) 63.

<sup>197</sup> Ngoh, *Southern Cameroons* (n 2) 163, Rubin (n 2) 114, Namata N. Mbile, *Cameroon Political Story: Memories of an Authentic Eyewitness* (Presprint 1999) 165-195.

<sup>198</sup> Prior to the Foumban encounter Ahidjo had sent his proposals to J. N. Foncha (Premier of Southern Cameroons) in order for his delegates to familiarise themselves with *La République's* proposal and produce their counter proposals. It is alleged that Foncha concealed this document from his delegates as a result they were only presented with it on the first day of the Foumban Conference. See Rubin (n 2) 114; Ngoh, *Southern Cameroons* (n 2) 163; Mbile (n 197) 165-195.

<sup>199</sup> Federal Constitution, 1961 (hereafter Fed. Const.), art 1. According to the British Under-Secretary for Colonies, a federation was the best possible option to promote unity while preserving the separate identity of the two territories. See HC Deb, 01 August 1961, vol 645, cols 1332-51.

<sup>200</sup> Article 59 of the Federal Constitution made that clear by providing that 'Les présent dispositions, qui portent révision de la Constitution de la République adoptée le 21 Février 1960 par le peuple camerounais...'

administration to embrace another.<sup>201</sup> The domination of West Cameroon was further evident in article 59 which provided that ‘La Constitution ainsi révisée sera publiée en français et en anglais, le texte français faisant fois’.<sup>202</sup> The British colonial legacy was only preserved to the extent that the Constitution provided for the recognition and continued application of legislation formerly enforced in the two territories, provided they were not inconsistent with the provisions of the Federal Constitution.<sup>203</sup> However, at the constitutional level, the institutions that dominated were those introduced by the 1960 Constitution of *La République*.

The constitutional changes led to some important effects on both CPR and the institutional framework for their enforcement. These are considered briefly below.

#### ***4.1.1. Civil and Political Rights***

One major controversial amendment introduced by the Federal Constitution was the failure to re-enact the CPR provisions contained in the 1960 constitutions of the formerly separated territories. Arguably, that relegation was repaired by the reaffirmation of attachment to the fundamental liberties guaranteed in the Universal Declaration and the United Nations Charter.<sup>204</sup> Moreover, the reaffirmation was entrenched in the body of the Constitution.<sup>205</sup> Thus as opposed to the previous position, CPR were in principle justiciable as provisions of the Constitution could be subject to judicial review.<sup>206</sup>

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<sup>201</sup> The issue of the possible subordination of the Southern Cameroons was significantly discussed in the U.K. House of Commons where some members of Parliament raised concerns about reports from *La République* indicating a certain perception that Southern Cameroons would be colonised by them. In fact, Honourable Mr Thompson (Dundee, East) repeated a phrase ‘Le premier Octobre on va saisir le Cameroun du Sud’ which had become a familiar slogan in *La République*. (on the first of October, we will take control of Southern Cameroons – author’s translation). HC Deb, 01 August 1961, vol 645 cols 1332-51.

<sup>202</sup> Translated as ‘The revised constitution shall be published in French and in English, the French version being authentic’ (official translation).

<sup>203</sup> Fed. Const, art 46.

<sup>204</sup> Fed. Const, art 1.

<sup>205</sup> Some of the provisions of the Preamble to the 1960 Constitution of *La République* (including the UDHR and the U.N. Charter) were reproduced in article 1 of the Fed. Const.

<sup>206</sup> Judicial review is discussed below in Section 4.1.4.

Curiously, the peculiar reference to the right to personal liberty in the previous 1960 Constitution of *La République*<sup>207</sup> was conspicuously omitted.

#### ***4.1.2. Separation of Powers and Checks and Balances***

The Constitution created a presidential system of government and maintained the tripartite division of power between the executive, the legislature and the judiciary. Federal power was divided between the President of the Federal Republic, the Vice President, the Federal National Assembly and the Federal judiciary.<sup>208</sup> At the level of the Federated States, governmental power was divided between the PM, legislative assemblies and the judiciaries.

The Vice-President was a ceremonial authority with virtually inconsequential powers. In fact, the Constitution provided that Federal authority was exercised between the President and Federal Assembly.<sup>209</sup> The Federal President was by far the most powerful of all the governmental authorities, retaining the powers conferred on him under the 1960 Constitution.<sup>210</sup> In addition, he was vested with wide ranging powers which included the promulgation and execution of both federal and state laws,<sup>211</sup> the organisation and direction of the public service,<sup>212</sup> appointment and dismissal of ministers<sup>213</sup> and PMs.<sup>214</sup>

The President's legislative powers were also retained with a few innovations introduced in the realm of control of the regime of exception.<sup>215</sup> As in the 1960 Constitution, the President had the sole discretion to determine what constituted a state of emergency or siege although in this case he was under a duty to consult the PMs of the Federated States for their opinion and not necessarily their consent, prior to a proclamation.<sup>216</sup> Another

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<sup>207</sup> See text to (n 135).

<sup>208</sup> Fed. Const, arts 4, 8, 16, 32.

<sup>209</sup> Fed. Const. art 4.

<sup>210</sup> Fed. Const. arts 8, 11, 12, 15, 18, 23, 31. cf subsection 3.2 above.

<sup>211</sup> Fed Const. art 12.

<sup>212</sup> Fed. Const, arts 8, 12.

<sup>213</sup> Fed. Const. art 11.

<sup>214</sup> Fed. Const. art 39.

<sup>215</sup> Fed. Const. art 23 & 24.

<sup>216</sup> Fed. Const, art 15.

innovation was a requirement for the Federal National Assembly to remain convened throughout the period of emergency.<sup>217</sup> In terms of oversight, it is doubtful<sup>218</sup> what effects the innovations may have had given that the same statute vested the President with powers to take all necessary measures in the circumstance without any limitation save for the requirement of informing the nation through a message.<sup>219</sup>

In terms of accountability, a commendable innovation was the possibility for the horizontal accountability of the President. The Federal High Court of Justice (itself a novel institution) had jurisdiction to try the President for acts of high treason and other federal and state executive authorities for conspiracy against state security.<sup>220</sup> Two fundamental weaknesses regarding presidential accountability emanated from the silence of the Constitution on the meaning of high treason and the mechanism for seizing the Court.<sup>221</sup> Nonetheless the provision generally marked an improvement on the former position where the President remained unaccountable.

With regard to legislative power, the federal legislature was an institution with limited legislative authority, circumscribed under parallel conditions that obtained in the 1960 Constitution.<sup>222</sup> At the state level, authorities had control over issues such as nationality, rules on conflict of laws, internal security, foreign affairs, the monetary system and education.<sup>223</sup> The House of Chiefs was maintained in the West Cameroon House of Assembly.<sup>224</sup> However, presidential power continued to dominate as seen above.<sup>225</sup> In addition the president exercised veto power over state legislative assemblies.<sup>226</sup> He also had power to dissolve Parliament in case of persistent gridlock between Parliament and

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<sup>217</sup> Fed. Const, art 15.

<sup>218</sup> Rubin (n 2) 126; Charles Fombad, 'Cameroon's Emergency Powers: A Recipe for (un)Constitutional Dictatorship' (2004) 48 (1) *Journal of African Law* 62, 64.

<sup>219</sup> Fed. Const, art 15(3).

<sup>220</sup> Fed Const, art 36.

<sup>221</sup> These were to be subsequently determined by federal legislation. Fed. Const. art. 36.

<sup>222</sup> Fed. Const, arts 23 7 24. cf. subsection 3.2 above.

<sup>223</sup> Fed. Const. arts 5 & 6.

<sup>224</sup> Fed. Const. arts 38 & 40.

<sup>225</sup> Anyangwe (n 19) 130-131.

<sup>226</sup> Fed. Const. art 45.

government or where a PM tendered his resignation following a vote of no confidence or motion of censure.<sup>227</sup>

#### ***4.1.3. The Judiciary and Judicial Independence***

The influence of the Federal President also extended to the judiciary which still remained an authority rather than a power unlike the executive and legislature. Nevertheless, the Federal Constitution introduced significant changes to the judicial landscape.

The judicial systems that existed in the formerly separated states were retained.<sup>228</sup> Whilst civil law continued to apply in East Cameroon, common law continued to apply in West Cameroon. The two systems remained separate with respect to legislation on organisation, jurisdiction and operation.<sup>229</sup> That was intended to be a provisional arrangement with a view towards eventually establishing uniform federal legislation applicable throughout the Federation.<sup>230</sup> To achieve that objective, commissions were created in 1964 to prepare uniform codes on some areas of law. These efforts were almost futile and the only significant success at the time was the uniform Penal Code of 1967 which was largely inspired by French principles of criminal law.<sup>231</sup>

Nevertheless, the institutions of the French colonial legacy continued to dominate at the constitutional level. Similar to the position in 1960, the Federal President was responsible for guaranteeing the independence of the judicial authority with powers to appoint and dismiss judges.<sup>232</sup> The Higher Judicial Council (HJC) was renamed the Federal Judicial Council but continued to exercise the same limited powers to provide advisory opinions to the President.<sup>233</sup> The organisation and functioning of the judiciary and the Federal

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<sup>227</sup> Fed. Const. art 44.

<sup>228</sup> Fed. Const. art 46.

<sup>229</sup> Salacuse (n 3) 268 & 271.

<sup>230</sup> *ibid* 275; Fombad, 'Researching Cameroonian Law' (n 3) 8.

<sup>231</sup> *ibid*. Greater progress has been made thus far with the adoption of a uniform civil procedure code, a harmonised criminal procedure code in 2006 and recently an electoral code in 2012.

<sup>232</sup> Fed. Const, art 32(2).

<sup>233</sup> Fed. Const, art 32.

Judicial Council were to be determined by federal legislation.<sup>234</sup> The Constitution made no provision for security of tenure, contrary to what obtained under the 1960 Constitution of *La République* although it was subsequently preserved by legislation.<sup>235</sup>

The fragile nature of judicial independence was said to have provided leverage for President Ahidjo to maintain an authoritarian regime as the judiciary was perceived as ‘agents and justifiers of repression’.<sup>236</sup> That was manifested in a 1962 case involving four UPC leaders perceived by the regime to be a threat to its stability and survival.<sup>237</sup> In a published statement which accused the President of attempting to create a ‘fascist-type dictatorship’, the authors were cautious to condemn terrorism and proclaim their adherence to legal procedures to articulate their grievances.<sup>238</sup> Following the publication of that statement, they were arrested and charged with acts of subversion under an emergency legislation on the suppression of subversion<sup>239</sup> despite having indicated that they did not intend to carry out any subversive activities.<sup>240</sup> They were tried, found guilty and sentenced to thirty months imprisonment, imposed a heavy fine and stripped of all political rights.<sup>241</sup> That decision was appealed but the Yaoundé Court of Appeal allegedly in response to the government’s demands increased their sentences.<sup>242</sup> On further appeal to the Supreme Court, the French judge<sup>243</sup> before whom the convicts appeared, noted the irregularities of the case but before he reached a decision the President unlawfully

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<sup>234</sup> Fed. Const, art 32.

<sup>235</sup> Decree No. 66/DF/205 of 28/04/1966, art 1(4) provided that judges of the bench were irremovable and in discharging their functions were only subject to the law and their conscience.

<sup>236</sup> Eyinga (n 186) 102.

<sup>237</sup> Le Vine, *The Cameroons: From Mandate* (n 13) 222; Harold Gray, *A Study of Cameroon’s UPC Rebellion and Chinese Communist Involvement* (USA: University Microfilms Incorporated 1969) 121; Eyinga (n 186) 103-104; Johnson (n 54) 252-254.

<sup>238</sup> *ibid.*

<sup>239</sup> Ordinance 62/OF/18 of 12 March, 1962 on the Suppression of Subversion.

<sup>240</sup> Eyinga (n 186) 103-104; Delancey (n 74) 52; Johnson (n 54) 252-254.

<sup>241</sup> Gray (n 237) 122.

<sup>242</sup> Eyinga (n 186) 103-104. See also *Bulletin Quotidienne*, No. 158, 12 July 1962, *Bulletin Quotidienne*, No. 281, 6 December 1962 cited in Johnson (n 54) 254.

<sup>243</sup> According to Le Vine, that judge was of French origin and as opposed to Cameroonian judges, was not amenable to pressures from the President. Shortly after independence, both the East and West Cameroonian judicial systems had a number of non-indigenous judges due to the small number of Cameroonian judges present at the time. The East Cameroon Court of Appeal and Supreme Court for instance, had a number of French judges appointed on the basis of a 1960 Franco-Cameroonian Convention which required the services of French judges until they could be replaced by adequately trained Cameroonian judges. See Le Vine, *The Cameroons: From Mandate* (n 13) 149.



requested the case file transferred to the Presidency.<sup>244</sup> Subsequently, presidential decrees dealing with the suppression of subversion provided that decisions in subversion cases were not subject to appeal.<sup>245</sup>

#### **4.1.4. Judicial Review**

A further innovation of the Federal Constitution was the specific provisions for constitutional and administrative review.<sup>246</sup> Jurisdiction in that respect was vested in the Federal Court of Justice.<sup>247</sup> In administrative review, the Court had jurisdiction to entertain petitions for the annulment of ultra vires or unlawful acts and claims for damages resulting from acts performed by federal administrative authorities.<sup>248</sup> In Constitutional review, the Court's jurisdiction was limited to providing an *advisory opinion* on the constitutionality of state and federal laws.<sup>249</sup> The constitution failed to state how to proceed once an opinion was given and the fact that it only delivered an advisory opinion implied that the President was under no obligation to adhere to that opinion. Another fundamental limitation was the restriction on standing. The jurisdiction of the Court could be invoked exclusively by the President at his discretion.<sup>250</sup> Ordinary citizens or even other executive or legislative authorities had no recourse to challenge the constitutionality of laws that potentially undermined the exercise of CPR.

A further constraint could be perceived from the composition of the Court in review matters. It was to be specially constituted by personalities appointed by the President for reason of their 'competence and experience' to serve for a period of one year.<sup>251</sup> According to Anyangwe, the appointment of non-judicial members to review the constitutionality of laws reflected the traditional French aversion towards a

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<sup>244</sup> Eyinga (n 186) 104.

<sup>245</sup> *ibid.*

<sup>246</sup> Fed. Const, arts 14 & 33.

<sup>247</sup> Fed. Const. art 33(2) & (3).

<sup>248</sup> Fed. Const. art 33(3).

<sup>249</sup> Fed. Const, arts 14 & 34.

<sup>250</sup> Fed. Const, art 14.

<sup>251</sup> Fed. Const. art 34.

‘*gouvernement des juges*’ and the subordinate position accorded the judiciary in the organisation of governmental power.<sup>252</sup>

It is perhaps due to those limitations that in spite of the repressive laws that were promulgated during the application of that Constitution only one matter relating to constitutional review was reported in 1970 – *Société des Grands Travaux de l’Est*.<sup>253</sup> That case concerned the application of a new tax code which was applied retrospectively to the effect that a businessman (who initiated review proceedings) was made to pay taxes in excess of the amount due to the tax authorities.<sup>254</sup> He argued that some sections of the new tax code should be amended as they breached the constitutional principle of non-retrospectivity.<sup>255</sup> The Court however held that it was beyond its jurisdiction to declare a law unconstitutional and in any case the President of the Federal Republic was the only authority with standing.<sup>256</sup>

Although the mechanism for constitutional review had limitations, from the perspective of East Cameroon, it was an improvement to the extent that no such provisions existed prior to 1961. However, to West Cameroon, it was a significant departure given that a more accessible and comprehensive mechanism existed prior to reunification. West Cameroonians had now been deprived of that ability to directly challenge the constitutionality of laws impinging on their CPR.

The foregoing paragraphs have demonstrated how the British colonial legacy was subsumed in preference for the French. They also demonstrated some innovations introduced by the Federal Constitution with respect to constitutionalism, CPR and how some of the weaknesses of the earlier French colonial legacy were further entrenched in the Federal Republic. In 1960 Ahidjo stated that the constitution of *La République* was a

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<sup>252</sup> Anyangwe (n 19) 135.

<sup>253</sup> *Société des Grands Travaux de l’Est*, Arrêt No.4/CFJ of 28 October, 1970 cited in Anyangwe (n 19) 144.

<sup>254</sup> *ibid.*

<sup>255</sup> *ibid.*

<sup>256</sup> *ibid.*

compromise between the American Constitution and that of the French Third Republic.<sup>257</sup> However, it seemed more like a version of the Constitution of the Fifth French Republic.<sup>258</sup> It was then amended and adopted as the Federal Constitution which contained a number of the institutions created by President Charles de Gaulle under the Constitution of the Fifth Republic.<sup>259</sup> That Constitution was de Gaulle's response to a constitutional crisis in 1958 and it produced the institutions which helped to create stability and entrench his hold on power.<sup>260</sup> The circumstances were not present in the prelude to the reunification of Cameroon and did not therefore warrant an almost complete transplantation of that Constitution without the relevant adaptations that were significant to the circumstances of the newly created state. That Constitution remained in force until it was repealed by the Unitary Constitution of 1972.

#### **4.2. The Unitary Constitution of 1972**

After the adoption of the Federal Constitution, there was an indication from the Ahidjo leadership of the intention to consider the creation of a unified party in Cameroon.<sup>261</sup> That vision was subsequently strengthened by continuing political instability occasioned principally by the opposition UPC party attempting to challenge Ahidjo's authoritarian regime. Moreover, single party dictatorships were becoming rife across sub-Saharan Africa, justified on the basis of the need to reinforce national unity and to promote the 'African Tradition'.<sup>262</sup> In Cameroon, the arrest of some UPC members in 1962 gave a firm indication that the future of political opposition was bleak.<sup>263</sup> Moreover the administration created artificial obstacles to the participation of the opposition in daily political activities. Registration offices were closed to opposition candidates wishing to register their candidacy for local elections.<sup>264</sup> On other occasions, party meetings or

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<sup>257</sup> Le Vine, *The Cameroons: From Mandate* (n 13) 225-227.

<sup>258</sup> Le Vine, *The Cameroon Federal Republic* (Cornell University Press 1963) 81.

<sup>259</sup> *ibid.*

<sup>260</sup> Le Vine, *The Cameroons. From Mandate* (n 13) 227.

<sup>261</sup> Rubin (n 2) 143-144; Jean Francois Bayart, 'The Birth of the Ahidjo Regime' in Richard Joseph (ed), *Gaullist Africa: Cameroon under Ahmadou Ahidjo* (Fourth Dimension Publishers 1978) 60-61.

<sup>262</sup> Johnson (n 54) 280; Rubin (n 2) 144.

<sup>263</sup> Johnson (n 54) 254. See also Bayart, 'The Birth of the Ahidjo Regime' (n 261) 62.

<sup>264</sup> Johnson (n 54) 254-255.

rallies were dispersed by security officers.<sup>265</sup> Constrained by these difficulties, some members of the UPC and other opposition parties deserted to join the ruling party, the *Union Camerounaise* (UC).<sup>266</sup> By 1965, all political parties in East Cameroon had been integrated into the UC.<sup>267</sup>

Meanwhile, the West Cameroonian political parties were facing internal squabbles within their ranks and rivalry between the different parties.<sup>268</sup> Ahidjo used these differences to highlight the need to reach a consensus by forming a unified party. In June 1966, the West Cameroonian politicians were to heed Ahidjo's firm demand for the dissolution of political parties in that region.<sup>269</sup> In August 1966, the regime succeeded in bringing all political parties at the federal level under one umbrella organisation dubbed the Cameroon National Union (CNU) thereby ensuring the demise of political pluralism in Cameroon.<sup>270</sup> Ahidjo's rationale for the formation of a single dominant party was the underdeveloped nature of the country and he was careful to emphasise that the measure was only temporary.<sup>271</sup> However, that as it later emerged, was a move to ensure the centralisation of political parties in order to pave the way for a unitary state.<sup>272</sup>

In May 1972, Ahidjo surprised the Federal Assembly with his intention to hold a popular referendum aimed at abolishing the Federation.<sup>273</sup> Following an overwhelming vote in favour of a unitary system, the Federation was abolished. A unitary Constitution was thus adopted in June 1972.<sup>274</sup> That Constitution divided Cameroon administratively into provinces with the name of the country amended from the Federal Republic to the United

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<sup>265</sup> Bayart, 'The Birth of the Ahidjo Regime' (n 261) 61. See also Gardinier (n 13) 125 esp. note 15.

<sup>266</sup> Le Vine, *The Cameroons. From Mandate* (n 13) 221-224; Johnson (n 54) 254-255; Bayart, 'The Birth of the Ahidjo Regime' (n 261) 62.

<sup>267</sup> *ibid.*

<sup>268</sup> Johnson (n 54) 257-258.

<sup>269</sup> Johnson (n 54) 284-285; Rubin (n 2) 152; Bayart, 'The Neutralisation of Anglophone Cameroon' in Richard Joseph (ed), *Gaullist Africa: Cameroon under Ahmadou Ahidjo* (Fourth Dimension Publishers 1978) 87.

<sup>270</sup> Johnson (n 54) 285; Rubin (n 2) 153; Bayart, 'The Neutralisation of Anglophone Cameroon' (n 269) 87.

<sup>271</sup> Bayart, 'The Birth of the Ahidjo Regime' (n 261) 61.

<sup>272</sup> Johnson (n 54) 280.

<sup>273</sup> Bayart, 'The Structure of Political Power' in Richard Joseph (ed) *Gaullist Africa* (n 261) 89.

<sup>274</sup> Decree No. 72/270 of 02 June, Promulgating the 1972 Constitution (Unitary Constitution).

Republic of Cameroon.<sup>275</sup> Besides the abolition of state institutions, the 1972 Constitution preserved much of the underlying themes of the Federal Constitution and its institutions. Nevertheless, it ushered in some innovations with respect to CPR and the mechanisms for their enforcement. The relevant innovations are discussed below.

#### ***4.2.1. Civil and Political Rights***

The Unitary Constitution reverted to the position accorded CPR in the 1960 Constitution of *La République*. Thus, the CPR discussed earlier were similarly vaguely worded and listed in the Preamble of the Unitary Constitution. Similarly, affirmation of Cameroon's attachment to the U.N. Charter and the Universal Declaration returned to the Preamble. That was a retrogressive move from the perspective that the Preamble was unenforceable.<sup>276</sup>

#### ***4.2.2. Separation of Powers and Checks and Balances***

The centralisation of executive power was further entrenched as the President became both Head of State and Head of Government.<sup>277</sup> He remained largely responsible for appointments to ministerial offices, the civil service in general and allocated powers to all government ministries which were located in Yaoundé, the national capital.<sup>278</sup> Subsequently the post of PM was reinstituted through a constitutional amendment in 1975.<sup>279</sup> That institution was even weaker than the equivalent institution under the 1960 and the Federal Constitutions. The PM was to be appointed and dismissed by the President.<sup>280</sup> The role of the former was to assist the President in the discharge of his

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<sup>275</sup> Unitary Constitution, art 1. In 1984, this appellation was changed to the Republic of Cameroon. See art 1 as amended by Law No. 84/1 of 02 April 1984.

<sup>276</sup> *Eitel Mouelle Kouala v République Fédéral du Cameroun*, Arrêt No. 178/CFJ/CAY of 29 March 1972, affirming that the Preamble declares general principles of law and was not justiciable.

<sup>277</sup> Unitary Constitution, art 5.

<sup>278</sup> Unitary Constitution, arts 7, 8, 9.

<sup>279</sup> Unitary Constitution, art 5 as amended by Law No. 75/1 of 09 May 1975.

<sup>280</sup> *ibid*

duties through powers delegated by him. Moreover, the Cabinet was appointed and controlled by the President rather than the PM.<sup>281</sup>

With respect to presidential accountability the position remained unchanged except that the court with jurisdiction to try the President for high treason was the Court of Impeachment, the organisation and functioning of which was to be determined by law.<sup>282</sup> The law subsequently vested Parliament with authority to impeach the President upon an absolute majority vote.<sup>283</sup>

In terms of the legislature, the Unitary Constitution ushered in a unicameral Parliament for the territory represented by a single political party.<sup>284</sup> One prominent effect was the dissolution of the West Cameroon House of Chiefs, signalling the demise of traditional authority at the national level. With regard to executive relations with Parliament, the power imbalance became more acute given the absence of opposition parties.<sup>285</sup> The legislative powers of Parliament were further limited by the provision which stated that Parliament may empower the President to legislate by ordinance and for a limited period on the areas of competence reserved for Parliament.<sup>286</sup> With respect to the control of periods of exception, Parliament was no longer required to remain convened.<sup>287</sup> The impeachment provision consisted of a weak form of accountability given that parliament was now comprised of a single party. It was doubtful that the party would be keen to oust the President from a system in which they all benefited.

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<sup>281</sup> *ibid.* See also Anyangwe (n 19) 134. The institution of the PM was eventually abolished in 1984 under President Paul Biya. According to the then Secretary General of the National Assembly, it was an attempt at 'streamlining the exercise of executive power by vesting such power in the President alone'. El Hadj Hayatou, 'Explanatory notes to the February 1984 Constitutional Amendment', in *Constitutional and Parliamentary Information* (1<sup>st</sup> Series, No. 143, The Inter-Parliamentary Union 1985).

<sup>282</sup> Unitary Constitution, art 34.

<sup>283</sup> Ordinance No. 72/7 of 26 August 1972 on the Court of Impeachment.

<sup>284</sup> Unitary Constitution, art 12.

<sup>285</sup> Unitary Const, arts 19-30.

<sup>286</sup> Unitary Constitution, art 21. cf Constitution of *La République* 1960, art 25.

<sup>287</sup> Unitary Constitution, art 11.

#### ***4.2.3. The Judiciary and Judicial Independence***

Another consequence of the creation of a unitary state was the establishment of a uniform judicial system<sup>288</sup> thereby abolishing the separate court systems that existed in the former East and West Cameroon. That notwithstanding, the Constitution further endorsed the continuous application of the separate legislations in force in the former East and West Cameroon as long as they were not inconsistent with any provisions of the Constitution or any subsequent laws or regulatory process.<sup>289</sup>

Nevertheless, with regard to the administration of justice, French civil law institutions continued to dominate. The judiciary remained under the control of the executive who was responsible for judicial appointments and dismissals.<sup>290</sup> The Federal Judicial Council reverted to the appellation of Higher Judicial Council (*Conseil Supérieur de la Magistrature*) preserving its advisory role.<sup>291</sup>

#### ***4.2.4. Judicial Review***

The Constitution further preserved the mechanism for the review of administrative acts and the constitutionality of laws with perhaps the main significant difference being that the institution now vested with jurisdiction was the Supreme Court which replaced the Federal Court of Justice.<sup>292</sup>

The Unitary Constitution as seen above, largely preserved the inadequate constitutional structure transplanted initially under the Constitution of *La République* and subsequently under the Federal Constitution. Admittedly, some attempts were made to improve the status of CPR although the overall framework for their enforcement undermined what gains may have been made. There was little recognition of the British colonial heritage at the constitutional level and its influence was limited to the Anglophone regions.

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<sup>288</sup> Ordinance No. 72/4 of 26 August 1972 on Judicial Organisation.

<sup>289</sup> Unitary Constitution, art 38.

<sup>290</sup> Unitary Constitution, art 31.

<sup>291</sup> Unitary Constitution, art 31. Cf Constitution of *La République*, art 41.

<sup>292</sup> Unitary Constitution, arts 10 & 32(c).

Indigenous institutions were similarly given little recognition at the constitutional level, particularly after the dissolution of the House of Chiefs. Whereas, the inadequate received civil law institutions continued to dominate with the erosion of what little protective mechanisms may have existed under that system.

A consequence that ensued was the rapid descent of the regime into authoritarianism due in part to the excessive executive powers and the absence of sufficient constitutional restraint.<sup>293</sup> Richard Joseph described the Ahidjo regime (which lasted from independence to 1982) as a perpetuation of the French regime of oppression.<sup>294</sup> That regime was consolidated through CPR violations such as arbitrary arrests, torture, exile, extra-judicial executions and press censorship through presidential decrees.<sup>295</sup> These arbitrary practices emerged in part because Ahidjo was trying to defuse the influence of the exiled wing of the UPC which continued to challenge the regime.<sup>296</sup> From the period of independence of *La République*, pro-UPCists criticised the inadequate guarantees of CPR in the Constitution, the over centralisation of power and the importation of constitutional features which had not been ‘tropicalised’.<sup>297</sup> In a bid to curb the influence of this group whose criticisms spilled over to the reunified states, Ahidjo ruled through ordinances and emergency regulations which contained wide restrictions on CPR.<sup>298</sup> The wide use of presidential legislative powers created a state of ‘legalised’ oppression and uncertainty as to which emergency legislation was in force at any particular time and what offences had been created under it.<sup>299</sup> Administrative actions pursuant to these regulations were purportedly replete with violations of CPR and disregard for the rule of

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<sup>293</sup> Mbu Etonga, ‘An Imperial Presidency: A Study of Presidential Power in Cameroon’ in Ndiva Kofele-Kale (ed), *An African Experiment in Nation Building: The Bilingual Cameroon Republic Since Reunification* (Westview Press 1980) 151-155.

<sup>294</sup> Richard Joseph, ‘France in Africa’ in Richard Joseph (ed), *Gaullist Africa* (n 261) 8.

<sup>295</sup> Joseph ‘France in Africa’ (n 294) 8. See also Delancey (n 74) 51.

<sup>296</sup> Johnson (n 54) 195. In 1956, Ahidjo made a goodwill gesture towards the UPC by lifting the ban against it, allowing its members who were still resident in the territory to reorganise the party. However, the more radical members who were on exile refused to be co-opted and continued to carryout their violent campaigns from outside. See Johnson (n 54) 243; Gardinier (n 13) 106.

<sup>297</sup> Johnson (n 54) 195-196.

<sup>298</sup> *ibid* 197-198. See also Eyinga (n 186) 100-111; A. Joseph & P. Lippens, ‘The Power and the People’ in Joseph (ed) *Gaullist Africa* (n 261) 113-116.

<sup>299</sup> Joseph & Lippens (n 298) 111-112.



law.<sup>300</sup> The emergency regulations were renewed every six months and were in fact not repealed until 1990.<sup>301</sup> Encroachment on civil liberties was justified by the need to maintain ‘integrity of the national territory, or of life, independence or institutions of the nation’ although the definition of these terms remained subjective to Ahidjo’s perception of the situation.<sup>302</sup>

The Unitary Constitution with its inadequate mechanisms for the protection of CPR remained in force until it was substantially revised in 1996.

### 4.3. Prelude to the Adoption of the 1996 Constitution

In 1982, reportedly for health reasons President Ahidjo unexpectedly resigned from power automatically conferring presidential power on the then Prime Minister Paul Biya.<sup>303</sup> President Biya perpetuated the authoritarian regime established under his predecessor strengthened even further after 1984 following an abortive coup d’état orchestrated by supporters of Ahidjo.<sup>304</sup> However, the political environment witnessed gradual changes through increasing domestic demands for political liberalisation.<sup>305</sup> This course was championed by the Anglophone minority that witnessed increased marginalisation in socio-economic development and insufficient representation in public

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<sup>300</sup> Johnson (n 54) 195-196; Eyinga (n 186) 100-111; Joseph & Lippens (n 298) 113-116.

<sup>301</sup> Ordinance No. 62/OF/18 of 12 May 1962 on the State of Emergency, art 5 provided that the Ordinance shall remain in force until a date which shall be fixed by law. It was eventually repealed by Law No. 90/47 of 19 December 1990 on the State of Emergency as part of liberal reforms introduced by President Biya.

<sup>302</sup> In 1965 for instance a Cameroonian deputy dared to propose reforms to the electoral system which would have provided the electorates with a wider choice of candidates for elections to the National Assembly. He was charged with subversion and given a two year custodial sentence. See Eyinga (n 186) 106.

<sup>303</sup> Victor Ngoh, ‘Biya and the Transition to Democracy’ in John Mbaku & Joseph Takougang (eds), *The Leadership Challenge in Africa: Cameroon under Paul Biya* (Africa World Press Inc. 2004) 427.

<sup>304</sup> Fombad & Jonie Fonyam, ‘The Social Democratic Front, the Opposition and Political Transition in Cameroon’ in Mbaku & Takougang (eds), *The Leadership Challenge in Africa* (n 303) 462; Piet Konings, *The Politics of Neoliberal Reforms in Africa: State and Civil Society in Cameroon* (Langaa Research/ African Studies Centre 2011) 30.

<sup>305</sup> Ngoh, ‘Biya and the Transition to Democracy’ (n 303) 434-437; Konings, *The Politics of Neoliberal Reforms* (n 304) 35-36.

administration.<sup>306</sup> The wave of political change sweeping through sub-Saharan Africa in the late 1980s and early 1990s helped to fuel political and legal developments in Cameroon.<sup>307</sup> The regime resisted calls for democratisation and responded to such demands with repression.<sup>308</sup> In February 1990, a group of Anglophone elites organised meetings to discuss the declining economic and political conditions in Cameroon and the possibility of forming a political party.<sup>309</sup> They were arrested, tried and convicted for holding clandestine meetings, promoting secession and for insulting the President.<sup>310</sup> This sparked further tension as it became clear that the regime was not ready for a democratic transition.<sup>311</sup> The government argued that the country was not ready for multiparty democracy as it would promote ethnic division and instability.<sup>312</sup> The government's response only increased the political tension and in May 1990 the Social Democratic Front (SDF), which remains the most influential opposition party, was formed.<sup>313</sup> During its official launching, security forces responded with repressive force killing six participants, mainly children.<sup>314</sup> The opposition responded by forming a coalition which organised nation-wide civil disobedience campaigns to paralyse governmental institutions.<sup>315</sup>

The government attempted to ease the political tension by making some reforms, through the enactment of the Liberty Laws.<sup>316</sup> A consequence was the proliferation of opposition parties and independent press organisations.<sup>317</sup> However, those laws operated within the

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<sup>306</sup> *ibid.* See also Konings, 'The Anglophone Struggle for Federalism in Cameroon' in Lidiya Basta & Jibrin Ibrahim (eds) *Federalism and Decentralisation in Africa: The Multicultural Challenge* (Fribourg: Institute of Federalism 1999) 305-307.

<sup>307</sup> Konings, *The Politics of Neoliberal Reforms* (n 304) 35-37.

<sup>308</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 434; Fombad & Fonyam (n 304) 462; Konings, 'The Anglophone Struggle' (n 306) 306.

<sup>309</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 433; Fombad & Fonyam (n 304) 462.

<sup>310</sup> *ibid.* See also Joseph Takougang & Milton Krieger, *An African State and Society in the 1990s: Cameroon's Political Crossroads* (Westview Press 1998) 105.

<sup>311</sup> *ibid.*

<sup>312</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 434.

<sup>313</sup> *ibid.* 435-436; Fombad & Fonyam (n 304) 463; Konings, 'The Anglophone Struggle' (n 306) 307; Takougang & Krieger (n 310) 107.

<sup>314</sup> *ibid.*

<sup>315</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 437.

<sup>316</sup> Text to (note 13) in the Introduction to this thesis.

<sup>317</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 437; Fombad & Fonyam (n 304) 464-465; Konings, 'The Anglophone Struggle' (n 306) 308.

framework of the Unitary Constitution which was hostile to genuine democratic participation.<sup>318</sup> The opposition continued to request for a sovereign national conference which the President had rejected as having no purpose in Cameroon.<sup>319</sup> However, in October 1991, a Tripartite Conference was organised by the government to bring together representative of the opposition, the ruling Cameroon People's Democratic Movement (CPDM) and government officials in an attempt to resolve the political crisis.<sup>320</sup> It resulted in the Yaoundé Declaration which was essentially a concession to which the opposition agreed to end the civil disobedience campaigns while the government acceded to making democratic and constitutional reforms.<sup>321</sup> However, the government failed to keep its part of the agreement particularly by failing to provide for an independent electoral system prior to presidential election in 1992. The incumbent President Biya won the elections which were reportedly marred by gross irregularities and electoral rigging.<sup>322</sup> In response, supporters of the SDF whose candidate was alleged to have been the actual winner staged massive demonstrations in the North West Region.<sup>323</sup> A state of emergency was declared in that Region and resulted in massive violations of CPR by security forces.<sup>324</sup> The leader of the SDF was placed under house arrest.<sup>325</sup>

While the government continued to resist genuine democratic reforms, international donors such as the International Monetary Fund and the World Bank pressured repressive regimes such as that of Cameroon to increase the pace of democratic reforms.<sup>326</sup> The government subsequently gave into those demands, and for a constitutional review. The President appointed eleven members to a Technical Committee on Constitutional Matters (TCCM), initially established during the Tripartite Conference.<sup>327</sup> The TCCM was

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<sup>318</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 437.

<sup>319</sup> Konings, *The Politics of Neoliberal Reforms in Africa* (n 304) 39-40.

<sup>320</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 440. In 1985, the Cameroon National Union was renamed Cameroon People's Democratic Movement during a party conference in Bamenda.

<sup>321</sup> *ibid.*

<sup>322</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 441-442; Fombad & Fonyam (n 304) 470; Konings, 'The Anglophone Struggle' (n 306) 308.

<sup>323</sup> *ibid.*

<sup>324</sup> *ibid.*

<sup>325</sup> *ibid.*

<sup>326</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 432; Konings, *The Politics of Neoliberal Reforms* (n 304) 356-357.

<sup>327</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 442.

composed of seven Francophones and four Anglophones and chaired by Joseph Owona, then Secretary General at the presidency and member of the central committee of the ruling CPDM.<sup>328</sup> It set to work on a constitutional *revision* contrary to the terms of the Yaoundé Declaration which had agreed for a new constitution.<sup>329</sup> Meanwhile an All Anglophone Conference (AAC) was convened in April 1993 to make proposals to the TCCM.<sup>330</sup> The Standing Committee established by the AAC submitted a draft constitution to the TCCM, proposing among others, recognition of the principles of liberal democracy, respect for human rights and fundamental freedoms, a return to the federal structure, reinstitution of the House of Chiefs, decentralisation, a presidential system with some features of separation of powers, checks and balances, judicial independence and judicial review reminiscent of the Southern-Cameroons Constitution.<sup>331</sup> A number of opposition parties, including the SDF, National Union for Democracy and Progress (NUDP) and Cameroon Democratic Union (CDU) also submitted proposals echoing those of the AAC. The SDF and NUDP went further to propose the establishment of a bicameral legislature comprising a House of Assembly and Senate, and that all presidential appointments be confirmed by Senate.<sup>332</sup>

However, the TCCM did not meet to discuss the proposals and amidst pressure from the government rejected those proposals prompting the resignation of its Anglophone members.<sup>333</sup> The Chair of the TCCM proceeded to submit proposals to President Biya, which were essentially a revision of the 1972 Constitution.<sup>334</sup> The proposals were then submitted to Parliament in the November 1995 parliamentary session.<sup>335</sup> They were subsequently enacted as the 1996 Constitution.<sup>336</sup>

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<sup>328</sup> Ngoh, 'Biya and the Transition to Democracy' (n 303) 442; Takougang & Krieger (n 310) 183.

<sup>329</sup> *ibid.*

<sup>330</sup> Konings, 'The Anglophone Struggle' (n 306) 310-311.

<sup>331</sup> *ibid* 311- 315.

<sup>332</sup> Takougang & Krieger (n 310) 184-189.

<sup>333</sup> Konings, 'The Anglophone Struggle' (n 306) 316; Takougang & Krieger (n 310) 183.

<sup>334</sup> Konings, 'The Anglophone Struggle' (n 306) 316; Takougang & Krieger (n 310) 183, 190.

<sup>335</sup> Takougang & Krieger (n 310) 190.

<sup>336</sup> Law No. 96/06 of 18 January 1996 to amend the Constitution of 02 June 1972.

Although the 1996 Constitution is not entirely new, the amendments are substantial and perhaps account for why it was described as ushering in a new era for the separation of powers, democratic governance and human rights.<sup>337</sup> Specifically with regards to CPR, in addition to those provided for in the Preamble to the 1972 Constitution, the 1996 Constitution affirms attachment to the African Charter on Human and Peoples' Rights and duly ratified international instruments relating thereto.<sup>338</sup> These instruments form part of the corpus of CPR legislation<sup>339</sup> and take precedent over national laws.<sup>340</sup> CPR have been given further boost through the incorporation of the Preamble as an integral part of the Constitution, implying that they are now justiciable.<sup>341</sup>

## CONCLUSION

This chapter has analysed the constitutional trajectory of Cameroon and demonstrated the divergent constitutional legacies bequeath by the French and the British. Post-colonial constitutional developments saw the continued erosion of the British colonial legacy despite the fact that some of its features adhered more to the basic tenets of constitutionalism as presented in Chapter 1. On the other hand, the French colonial legacy initially dominated constitutional reforms establishing a weak form of constitutionalism. Post-1961 constitutional developments further entrenched that legacy in the process intensifying its weaknesses by eroding what little protective mechanisms were in operation. Moreover, indigenous institutions continued to be relegated as in the colonial period. Thus, Cameroon inherited and further developed constitutional features which were neither sufficiently robust nor reflective of its specific circumstances.

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<sup>337</sup> Text to (note 15) in the Introduction to this thesis.

<sup>338</sup> Preamble, para 5.

<sup>339</sup> No special procedures are required with respect to their incorporation, given that the legal system is based on a monist approach by virtue of which international instruments can be directly applicable once ratified. On the incorporation of international instruments see Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press 2007) 527-535. See also Paul Sieghart, *The International Law of Human Rights* (Oxford University Press 1983) 41-42.

<sup>340</sup> Article 45 of the Constitution provides that following their publication, duly approved or ratified treaties shall take precedence over national laws.

<sup>341</sup> Constitution of Cameroon 1996, art 65. To the extent that preambular provisions are enforceable or possess interpretive status, they are also a relevant way of expressing a country's fundamental rights commitments. See Liav Orgad, 'The Preamble in Constitutional Interpretation' (2010) 8(4) *International Journal of Constitutional Law* 718, 722-728.

The fall out became visible during the early post-colonial period which was characterised by authoritarianism and the violation of CPR. Faced with a system that neither effectively guaranteed rights, nor empowered the population to exercise what meagre rights were available, Cameroonians joined the rising tide of demands for political liberalisation in Africa to demand reforms geared at transforming the authoritarian regime in Cameroon. The 1996 Constitution was enacted against that backdrop purportedly to establish a new era which should pay greater recognition to CPR and demonstrate a greater commitment to developing more robust institutional features for their protection.

The rest of the thesis will examine the supposedly new arrangements and what the outcome has been for the protection and enhancement of CPR. In particular, it will seek to demonstrate that continuities still exist in the constitutional framework, a situation which has continued to have adverse repercussions on CPR. The next chapter begins that analysis by examining presidential power in Cameroon.

## **Chapter 3**

### **Separation of Powers and Checks and Balances in Cameroon: The Case of an Imperial Presidency**

#### **INTRODUCTION**

This chapter examines presidential power in Cameroon in the context of the separation of powers and checks and balances. As discussed in Chapter 1, the separation of powers and checks and balances are complementary principles which have the potential to enhance the realisation of CPR.<sup>1</sup> Through those principles, governmental institutions can be vested with powers to perform specific functions and also empowered to exercise mutual accountability to ensure that each institution operates within its limits. The separation of powers principle also makes allowance for some degree of overlap which may be necessary to enhance effective governance. Nevertheless, there should be a robust system of checks and balances to pre-empt potential arbitrary use of powers. An inadequately conceived system of separation of powers, with insufficient checks and balances creates a condition of imbalance which can provide scope for a more powerful arm to usurp power and rule by authoritarian means.

In Cameroon, as noted in the previous chapter, the model adopted at independence and subsequently, granted wide powers to the President with insufficient restraint mechanisms. The 1996 Constitution purports to reverse that position by creating a more equitable balance of powers. Yet, as this chapter shall attempt to demonstrate, there is still considerable overlap of governmental powers which fails to remedy the problem. Because the 1996 Constitution has continued to be influenced by its French colonial heritage, the President remains vested with powers to control the government and governmental institutions, the legislature and legislative processes and to regulate the state of emergency. Similarly, the accountability mechanisms provided by the Constitution do not afford scope for robust control of the exercise of presidential powers.

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<sup>1</sup> ch 1, s 3.1 at 36-42.

These factors combine to facilitate the development of an imperial president who can undermine the ability for other governmental institutions to protect and enhance CPR.

The chapter is divided into three major sections. Section one provides a brief overview of ‘semi-presidentialism’ (adopted in the 1996 Constitution) and a theoretical perspective of that model of separation of powers with regard to the protection and enhancement of CPR. Section two then discusses some of the powers vested in the President of Cameroon and how their exercise can affect CPR. Section three examines the constitutional accountability (horizontal) mechanisms and how they relate to the realisation of CPR.

## **1. SEMI-PRESIDENTIALISM AND PRESIDENTIAL POWER: A BRIEF OVERVIEW**

‘Semi-presidentialism’ is a term for a political system that combines a presidential with a parliamentary system. According to Maurice Duverger, who first coined the term, the distinguishing features of semi-presidential systems are, a popularly elected president vested with ‘quite considerable powers’ and a cabinet led by a prime minister who is responsible to the legislature.<sup>2</sup> Although Duverger failed to describe what constitutes ‘quite considerable powers’ recent scholarship has identified three distinctive powers as falling under that category. They include power to dismiss the Prime Minister and Cabinet, presidential veto power and power to dissolve the Legislature.<sup>3</sup>

The semi-presidential model can be described as an additional separation of powers because of the division of executive power between the President and Prime Minister.<sup>4</sup> From the perspective of constitutionalism, as defined in Chapter 1, an advantage of that additional separation is the potential of mitigating the over concentration of powers in a single executive head possibly affording the opportunity for a more equitable balance of power between the executive and other governmental powers. However, not all semi-

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<sup>2</sup> Maurice Duverger, ‘A New Political System Model: Semi-Presidential Government’ (1980) 8 *European Journal of Political Research* 166.

<sup>3</sup> Martin Shugart, ‘Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns’ (2005) 3 *French Politics* 323, 340-342.

<sup>4</sup> Cindy Skach, ‘The “newest” Separation of Powers: Semipresidentialism’ (2007) 5(1) *International Journal of Constitutional Law* 93, 96.



presidential regimes exhibit a factual additional separation of power. That is particularly the case with highly presidential semi-presidential regimes.<sup>5</sup> This sub-type is characterised by a very powerful president and a ceremonial prime minister, a variant which exhibits an over-concentration of executive powers in a president similar to some purely presidential systems.<sup>6</sup> In addition, highly presidential sub-types face the problem of dual accountability of the Prime Minister<sup>7</sup> who can be dismissed by the President and also censured by Parliament. Whereas, the President is neither accountable to the Prime Minister nor Parliament and in fact can make use of his special powers to dissolve Parliament.<sup>8</sup> A third disadvantage emanates from the implications of ‘quite considerable powers’ as they provide scope for executive control of the legislature without a corresponding duty for the legislature to exercise control on the executive.

Recalling at this point the issue of context highlighted in Chapter 1,<sup>9</sup> the development of a system of separation of powers and checks and balances should take into account the context in which the system will apply. Relating that to semi-presidentialism, the highly presidential subtype is said to be problematic for nascent or fragile democracies.<sup>10</sup> For Robert Elgie such systems have had a very poor record with freedom and foster authoritarianism<sup>11</sup> particularly where presidential dominance is accompanied by a highly disciplined majority in parliament.<sup>12</sup> Cindy Skach however, perceives a highly disciplined majority as a stabilising factor capable of mitigating the potential tension between warring executives.<sup>13</sup> Both scenarios as perceived by Arend Lijphart and Skach are plausible as a disciplined majority is likely to always be in agreement with presidential

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<sup>5</sup> Martin Shugart and John Carey refer to it as ‘president-parliamentarism’. Martin Shugart and John Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge University Press 1992) 23. Various subtypes of this regime have been developed. They include highly presidential, balanced semi-presidential regimes and semi-presidential regimes with a ceremonial president. See generally, Robert Elgie, ‘A Fresh Look at Semi-Presidentialism: Variations on a Theme’ (2005) 16(3) *Journal of Democracy* 98.

<sup>6</sup> Elgie ‘A Fresh Look at Semi-Presidentialism’ (n 5) 202-203.

<sup>7</sup> Francesco Cavatorta & Robert Elgie, ‘The Impact of Semi-presidentialism on Governance in the Palestinian Authority’ (2010) 63(1) *Parliamentary Affairs* 22, 29-30; Skach (n 4) 97-98.

<sup>8</sup> Cavatorta & Elgie (n 7) 29-30.

<sup>9</sup> ch 1, s 2.3 at 30-32.

<sup>10</sup> Skach (n 4) 120-122; Elgie, ‘A Fresh Look at Semi-Presidentialism’ (n 5) 101-105.

<sup>11</sup> Elgie, ‘A Fresh Look at Semi-Presidentialism’ (n 5) 101-105.

<sup>12</sup> Arend Lijphart, ‘Constitutional Design for Divided Societies’ (2004) 15(2) *Journal of Democracy* 96, 102.

<sup>13</sup> Skach (n 4) 101-102.

policies and therefore pre-empt crises of disagreement.<sup>14</sup> In the same vein, owing to the uncontested acquiescence of the majority, the President can easily promote his authoritarian ambition.

It has also been argued that semi-presidentialism, particularly the highly presidential subtype tends to reinforce or ‘actively’ foster the development of a culture of personal rule,<sup>15</sup> something which is inherently antithetical to CPR. Personal rule<sup>16</sup> is a type of state authority structure based on the leadership of one individual who exercises institutionally unrestrained powers, presides over a neopatrimonial<sup>17</sup> public administration through a patronage network and uses those features (power and patronage) as instruments for wielding political power.<sup>18</sup> As power continues to be concentrated in, and exercised by one individual there is great tendency to descend into authoritarianism.<sup>19</sup> This is largely because it is an arbitrary and personal regime that relies on law and coercive instruments of the state to accelerate its own agenda which includes elimination of political rights and opportunities of opposition and other political groups.<sup>20</sup> Elgie asserts that in highly presidential semi-presidential regimes, the direct election of the President can lead to portrayal as the father or saviour of the nation thereby reinforcing the paternalistic view of the President in a political culture which perhaps already had traits of a personality cult.<sup>21</sup> The extensive powers vested in the President are used to reward public officials in the patronage network. The latter perceive themselves as being accountable to the ruler

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<sup>14</sup> Lijphart (n 12) 102; Skach (n 4) 101-102.

<sup>15</sup> Elgie, ‘A Fresh Look at Semipresidentialism’ (n 5) 104-105.

<sup>16</sup> Jackson & Rosberg, *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant* (University of California Press 1982) 23. Alex Thomson has also described personal rule in Africa as being authoritarian and arbitrary. See Thomson, *An Introduction to African Politics* (Routledge 2000) 108-109.

<sup>17</sup> Neopatrimonialism refers to a system of authority that depends on the subordination of state institutions to an individual ruler and on the award of personal favours by public officials to the regime’s support network. See Michael Bratton & Nicholas Van de Walle, ‘Neopatrimonial Regimes and Political Transitions in Africa’ (1994) 46(4) *World Politics* 453, 458. See also the same authors in, *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective* (Cambridge University Press 1997) 61.

<sup>18</sup> Farid Guliyev, ‘Personal Rule, Neopatrimonialism and Regime Typologies: Integrating Dahlian and Weberian Approaches to Regime Studies’ (2011) 18(3) *Democratisation* 575, 585; Jackson & Rosberg (n 16).

<sup>19</sup> Jackson & Rosberg (n 16) 23; Thomson (n 16) 108-109.

<sup>20</sup> Jackson & Rosberg (n 16) 23.

<sup>21</sup> Elgie, ‘A Fresh Look at Semipresidentialism’ (n 5) 105.

only and therefore avoid formal institutional checks.<sup>22</sup> Moreover, in order to preserve the regime, the executive may resort to extraordinary measures to prevent any circumstances which may result in curtailment of its powers.<sup>23</sup>

Admittedly, the personal rule paradigm has been associated with some regimes in sub-Saharan Africa which are either parliamentary or presidential in orientation. For Kwasi Prempeh, a factor that can be attributed to the persistence of imperial presidencies in Africa is the extensive powers exercised by presidents.<sup>24</sup> Therefore, there is an intuitive logic in arguing that through the exercise of those powers in the context of societies where personal relations play an important part in governance there is a high tendency for personal rule to develop. However, two significant factors which distinguish semi-presidential regimes and may account for their greater probability of descending to, or nurturing a culture of personal rule, is the configuration of presidential powers and the inadequate accountability mechanism.<sup>25</sup> The President in highly presidential subtypes in particular, exercises what can be considered as ‘ordinary’, ‘special’ and ‘quite considerable’ powers<sup>26</sup> with little oversight making them over and above all other governmental institutions, society and the rule of law.

Having presented a theoretical overview of semi-presidentialism above, the Cameroonian position is now examined.

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<sup>22</sup> Bratton & Van de Walles, *Democratic Experiments in Africa* (n 17) 65.

<sup>23</sup> Linda Kirschke, ‘Semi-Presidentialism and the Perils of Power Sharing in Neopatrimonial States’ (2007) 40 (11) *Comparative Political Studies* 1372, 1381.

<sup>24</sup> Kwasi Prempeh, ‘Presidential Power in Comparative Perspective: The Puzzling Persistence of Imperial Presidency in Post-Authoritarian Africa’ (2008) 35(4) *Hastings Constitutional Law Quarterly* 1.

<sup>25</sup> Elgie, ‘A Fresh Look at Semipresidentialism’ (n 5) 104-105.

<sup>26</sup> Félix Bankounda-Mpele applies those three classifications to denote respectively, powers that would traditionally be vested in a president as head of state, and additional powers (with the exclusion of quite considerable powers) characteristic of civil law systems modelled after the Constitution of the Fifth French Republic. Bankounda-Mpele, ‘Repenser le Président Africain’ (Viiè Congrès Français de Droit Constitutionnel sur la 50è Anniversaire de la Constitution du 4 Octobre 1958, 25-27 September 2008, Paris) 9.

## **2. PRESIDENTIAL POWERS AND THE PROTECTION AND ENHANCEMENT OF CIVIL AND POLITICAL RIGHTS IN CAMEROON.**

Cameroon, has adopted a semi-presidential system in its 1996 Constitution which reflects the highly presidential variant with its challenges as described above. As in the Unitary Constitution, the President is vested with considerable powers over the government, the civil service, the judiciary,<sup>27</sup> the legislature and authority to regulate the state of emergency. The exercise of those powers has also been facilitated in practice by the fact that the President's party retains an overwhelming and largely disciplined majority in Parliament.<sup>28</sup> It will be contended that these factors have contributed to undermine the effective enforcement of CPR in Cameroon. The various types of presidential powers and their impact on CPR are analysed below.

### **2. 1. Presidential Control of the Government and the Civil Service**

A number of provisions vesting the President with 'ordinary' powers demonstrate an unambiguous affirmation of his supremacy in the Constitution. Accordingly, the President represents the state in all acts of public life;<sup>29</sup> defines national policy;<sup>30</sup> ensures respect for the Constitution;<sup>31</sup> and 'through his arbitration' ensures the proper functioning of public authorities;<sup>32</sup> promulgates laws;<sup>33</sup> guarantees the independence, territorial integrity and continuity of the polity;<sup>34</sup> and ensures the internal and external security of the State.<sup>35</sup> Those powers create a paternalistic image of the President, reinforcing a perception that his very authority is imperative for the survival of the country. In addition, his control over the Prime Minister (PM), the Cabinet and civil service has facilitated the development and entrenchment of a personal rule culture, which as

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<sup>27</sup> The judiciary is examined in the next chapter.

<sup>28</sup> The ruling Cameroon People's Democratic Movement (CPDM) occupies 153 of the 180 seats in Parliament.

<sup>29</sup> Constitution of Cameroon, art 8(1)

<sup>30</sup> *ibid* art 5(2) para 1.

<sup>31</sup> *ibid* art 5(2) para 2.

<sup>32</sup> *ibid* art 5(2) para 3.

<sup>33</sup> *ibid* art 8(5) and 31.

<sup>34</sup> *ibid* art 5(2) para 4.

<sup>35</sup> *ibid* art 8(3).

discussed above is inherently authoritarian. This section discusses the interplay between those powers, personal rule and CPR in Cameroon.

### ***2.1.1. The Prime Minister and Cabinet***

After various phases of abolition,<sup>36</sup> the position of PM was reinstituted in 1991 following a constitutional amendment.<sup>37</sup> The Constitution provides that the President shall appoint the PM and ‘on the proposal of the latter, appoint the other members of government’.<sup>38</sup> In practice however, ministerial appointments are made concurrently with the appointment of a PM.<sup>39</sup> In which case, it is possible to infer that he is not always consulted in the selection of his cabinet. The Constitution provides further that their duties shall be defined by the President who can also terminate their appointment.<sup>40</sup> That position gives a prima facie case of Cabinet’s accountability to the President rather than the PM who is Head of Government.

Besides his accountability to the President, the PM is accountable to Parliament.<sup>41</sup> Parliament controls government action through oral and written questions.<sup>42</sup> In theory government can be held accountable through a motion of censure or a vote of no confidence,<sup>43</sup> after which the PM would be expected to tender the resignation of the government to the President.<sup>44</sup> In terms of achieving a balance and separation of powers, those arrangements are problematic for at least two reasons.

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<sup>36</sup> Text to (n 279) ch 2.

<sup>37</sup> Joseph Kankeu, *Droit Constitutionnel* (Tome 1, 1er Edition, Presses Universitaires de Dschang 2003) 168.

<sup>38</sup> Constitution of Cameroon, art 10(1).

<sup>39</sup> For instance, the current PM, Yang Philemon, was appointed in June 2009 on the same day as the Ministers for Defence, Sports, Women’s Affairs, Transport, Communication, Post and Telecommunications and Basic Education. See Dougueli Georges, ‘Paul Biya Remanie Son Gouvernement: Valse des Ministres à Yaoundé’ (30 June 2009) <[www.JeuneAfrique.com/Article/ARTJAWEB20090630235233/-RDPC-Paul-Biya...](http://www.JeuneAfrique.com/Article/ARTJAWEB20090630235233/-RDPC-Paul-Biya...)> accessed 12 November 2012.

<sup>40</sup> Constitution of Cameroon, art 10(1).

<sup>41</sup> *ibid* arts 11, 34 & 35.

<sup>42</sup> *ibid* art 35(1).

<sup>43</sup> *ibid* art 34.

<sup>44</sup> *ibid* art 34(5).

Firstly, although the PM is head of government, policy is dictated by the President but it will be the PM and his Cabinet who will be censured if Parliament were to call into question the confidence of government. The dual accountability of the PM makes that institution practically of little significance in terms of separation of powers. Given that the PM and Cabinet are subservient to the President, it is in their interest to ensure that government policy (as defined by the President) is fully implemented. Such a position allows the President to deflect criticism and censure onto the Cabinet. According to Joseph Kankeu, the purported separation of powers is more apparent than real.<sup>45</sup> The subordination of PM and the government has been entrenched by the Constitution which has merely developed the prime ministry as an institution with an instrumental role rather than one that develops and implements government policies.<sup>46</sup> Kankeu and Solomon Bilong assert that the Prime Minister's role is that of concretising and implementing unpopular policy preferences of the President.<sup>47</sup> In which case, it might be more accurate to speak of the executive as composed of the President who is both Head of State and Head of Government.

Secondly, the provision on motions of censure and vote of no confidence as measures to achieve government's accountability is not effective in practice. The PM can be subsequently reappointed by the President even after a motion of censure leads to his resignation.<sup>48</sup> This implies that parliamentary oversight is rather ineffective if it can be overridden by the reappointment of the PM. Moreover, it is unlikely that a motion of censure has a chance to succeed as the ruling Cameroon People's Democratic Party (CPDM) controls a highly disciplined majority of 153 out of 180 seats in Parliament. Admissibility depends on endorsement by a minimum of one-third of the members of Parliament and its success depends on endorsement by a two-third majority.<sup>49</sup> In the case of a vote of no confidence, it can only be passed by an absolute majority.<sup>50</sup> According to

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<sup>45</sup> Kankeu, *Droit Constitutionnel* (n 37) 168-169.

<sup>46</sup> *ibid.* See also Solomon Bilong, 'La Structure du Pouvoir de L'Etat au Cameroun: Une Analyse Socio-Juridique' (African Training and Research Centre in Administration for Development, Morocco, 2001) 6-8, <<http://unpan1.un.org/introdoc/groups/public/documents/cafrad...pdf>> accessed 16 July 2012.

<sup>47</sup> *ibid.*

<sup>48</sup> Constitution of Cameroon, art. 34(6).

<sup>49</sup> *ibid* art 34(2)

<sup>50</sup> *ibid* art 34(2)

Paul Ayah MP,<sup>51</sup> in practice, the constraints have made it impossible for Parliament to hold the government to account.<sup>52</sup> He argues that CPDM parliamentarians are reluctant to vote against their party as that may constitute grounds for disciplinary action.<sup>53</sup> A case in point is the 2008 constitutional amendments which amongst others changes, eliminated presidential term limits. Paul Ayah was the only member of the ruling party who opposed the amendment and abstained from voting. Subsequently, in a press interview, he alleged threats to his life and that of his family and victimisation from security forces as a result of his criticism of the ruling party. He eventually resigned from the party to join the opposition.<sup>54</sup>

Another factor which may explain the reluctance of CPDM members to vote against party initiatives (even if they disagree with such initiatives) is the patronage advantage that comes with belonging to the ruling party.<sup>55</sup> The CPDM party affords the best opportunity for patronage and according to the *Bertelsmann Stiftung*,<sup>56</sup> candidate selection is based on 100% loyalty to presidential policy.<sup>57</sup>

### 2.1.2. The Civil Service

With regard to the civil service, presidential powers include heading the armed forces;<sup>58</sup> setting up and organising administrative services;<sup>59</sup> and appointments to civil, military

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<sup>51</sup> Paul Ayah was formerly a CPDM parliamentarian who defected to join the opposition. Prior to becoming a politician, he was a judge in the Court of Appeal.

<sup>52</sup> Paul Ayah, 'A Cameroonian Case Study: Executive Presidency versus Parliamentary Executive' (2004) 85(4) *The Parliamentarian: Journal of the Parliaments of the Commonwealth* 318.

<sup>53</sup> *ibid.*

<sup>54</sup> Emmanuel Kendemeh, 'Hon. Ayah Paul Abine' *Cameroon Tribune* (Yaoundé, 10 January 2011) <[www.cameroon-tribune.cm/index.php?option=com\\_content&view=article&id=62972:hon-ayah-paul-abine-quits-cpdm&catid=1:politique&Itemid=3](http://www.cameroon-tribune.cm/index.php?option=com_content&view=article&id=62972:hon-ayah-paul-abine-quits-cpdm&catid=1:politique&Itemid=3)> accessed 29 August 2012; Reuters Africa, 'Cameroon Presidential Hopeful Quits Ruling Party' (11 January 2011) <<http://af.reuters.com/article/topNews/idAFJOE70A0HZ20110111>> accessed 29 August 2012.

<sup>55</sup> Jürg M. Gabriel, 'Cameroon's Neopatrimonial Dilemma' (1999) 7 *Journal of Contemporary African Studies* 187; Susan Dicklitch, 'Failed Democratic Transition in Cameroon: A Human Rights Explanation' (2002) 24(1) *Human Rights Quarterly* 152.

<sup>56</sup> Text to (n 21) in the Introduction to this thesis.

<sup>57</sup> Bertelsmann Stiftung, 'Bertelsmann Transformation Index 2012- Cameroon Country Report' (Gütersloh: Bertelsmann Stiftung, 2012) 6 <[www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf](http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf)> accessed 20 July 2012.

<sup>58</sup> Constitution of Cameroon, art 8(2)

<sup>59</sup> *ibid* art 8(9)

and para-public institutions.<sup>60</sup> These powers, in addition to those discussed in the previous subsection provide a formidable basis for the reward of key figures that support the regime.<sup>61</sup> Due to the underdeveloped nature of the economy, spurred by scarcity of resources, there is competition for resources and key positions in the government and public services.<sup>62</sup> The select few officials appointed to various positions are keen to remain in them to secure their political, economic and social status.<sup>63</sup> Individually or collectively, some have expanded their support networks by granting favours to members of the public in order to elicit support for the regime.<sup>64</sup> An example here is the former Anglophone Prime Minister Peter Musonge who was appointed in 1996. In a speech delivered at a reception in Buea,<sup>65</sup> Capital of the South West Region, he called on the Anglophone community to unanimously support President Biya as a mark of appreciation for appointing an Anglophone to that office and also to receive further favours from the government.<sup>66</sup> The Governor of that Region at the time (Peter Oben) endorsed South Westerners and ‘immigrants’ to support the CPDM party for similar reasons.<sup>67</sup>

Given that the patronage network survives on loyalty and reward, public officials interested in advancing their career may feel compelled to promote the interest of the regime, despite the probability of their actions resulting in restrictions on CPR. They owe allegiance to the President who can dismiss them unilaterally. As Tom Ginsburg notes, bureaucratic agents can be influenced by the ruler through the use of incentive structures, to achieve certain objectives.<sup>68</sup> He notes in particular that by rewarding loyal agents and

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<sup>60</sup> *ibid* art 8(10)

<sup>61</sup> Jean-François Bayart, *The State in Africa: the Politics of the Belly* (Longman 1993) 19; Joseph Takougang & Milton Krieger, *African State and Society in the 1990s: Cameroon's Political Crossroads* (Westview Press 1998).

<sup>62</sup> Takougang & Krieger (n 61) 52, 99; Dicklitch (n 55) 164-166; Ketil Hansen, ‘The Politics of Personal Relations: Beyond Neopatrimonial Practices in Northern Cameroon’ (2003) 73(2) *Africa: Journal of the International African Institute* 202; Oben Mbuagbor & Robert Akoko, ‘Roll Back: Democratisation and Social Fragmentation in Cameroon’ (2004) 13(1) *Nordic Journal of African Studies* 1, 3-5.

<sup>63</sup> Hansen (n 62) 212-218; Mbuagbor & Robert Akoko (n 62) 3-5.

<sup>64</sup> *ibid*.

<sup>65</sup> Buea is a historically significant town because it was the capital of the former West Cameroon.

<sup>66</sup> Peter Geschiere, *The Perils of Belonging: Autochthony, Citizenship and Exclusion in Africa and Europe* (University of Chicago Press 2009) 47.

<sup>67</sup> *ibid* 63.

<sup>68</sup> Tom Ginsburg, ‘Administrative Law and Judicial Control of Agents in Authoritarian Regimes’ in Ginsburg & Moustafa (eds) *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge 2008) 61.



punishing disloyal ones through career advancement or retirement, rulers provide incentives for officials to perform.<sup>69</sup> A classic example was noted by the National Democratic Institute (NDI) during the 1992 presidential election in Cameroon. An excerpt from their report is worth reproducing here:

The NDI has received direct testimony to the effect that, prior to the election, high level government officials were told that their performance would be rated on the number of votes President Biya garnered in their respective areas. They were given a goal of 60 percent and told that this figure should be achieved by whatever means was necessary.<sup>70</sup>

Under such circumstances, it is not surprising that there were severe irregularities recorded during that election. As the NDI noted there were extremely anomalous results in some areas such as the Mvila Division which reported a 100% turnout of voters (a total of 5,856) and 100% votes in favour of President Biya.<sup>71</sup> In spite of serious allegations of electoral fraud perpetrated by executive officials the results were endorsed and proclaimed by the Supreme Court.<sup>72</sup>

Security forces have also benefited from the patronage network and have played an indispensable role in reinforcing authoritarianism.<sup>73</sup> Due in part to the difficult economic situation in Cameroon, and the political awareness of the population, the Biya regime has increasingly come under criticism.<sup>74</sup> That situation has increased the need for him to maintain a firm hold on the country by systematic and arbitrary suppression of political dissent. Particularly after the failed *coup* attempt in 1984, the President has consistently appointed senior members of the military from his ethnic group.<sup>75</sup> Those officials in turn

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<sup>69</sup> *ibid.*

<sup>70</sup> National Democratic Institute, 'Interim Report: International Delegation to the Presidential Elections in Cameroon' (28 October 1992) 93 <[www.ndi.org/files/0822\\_cm\\_interim\\_102892.pdf](http://www.ndi.org/files/0822_cm_interim_102892.pdf)> accessed on 05 January 2012.

<sup>71</sup> National Democratic Institute, 'Interim Report' (n 70) 95.

<sup>72</sup> *ibid.*

<sup>73</sup> Takougang & Krieger (n 61) 71.

<sup>74</sup> Victor Le Vine, 'Leadership and Regime Changes in Perspective' in Schatzberg & Zartman, *The Political Economy of Cameroon* (Praeger 1985) 20-49.

<sup>75</sup> Takougang & Krieger (n 61) 71; Dicklitch (n 55) 164.

have developed support networks within the police and armed forces and awarded favours to their supporters to elicit their loyalty to the regime. During the 1990s the salaries of public servants were gradually reduced by approximately fifty percent as part of measures taken under the Structural Adjustment Programme.<sup>76</sup> Yet, the salaries of the police and armed forces were not reduced and they have continued to be endowed with various fringe benefits as reward for their loyalty.<sup>77</sup> According to the *Bertelsmann Stiftung*, the military is constantly monitored by the presidency to detect signs of discontent.<sup>78</sup> Security forces have been repeatedly deployed to crack down on opposition and other civilian groups as a means of preventing any perceived threat to the regime.<sup>79</sup> During the 2008 riots, security forces did not hesitate to violently crack down on protesters opposing the increasing cost of living and proposed amendments to the Constitution to eliminate presidential term limits.<sup>80</sup> Given that the amendment would have facilitated the continued leadership of President Biya, disapproval amounted to a challenge of the regime and therefore warranted the deployment of security forces to ‘maintain public order’. The President condemned protesters in very firm terms, describing them as ‘sorcerer’s apprentice’ attempting to use unconstitutional means to put him out of office.<sup>81</sup> As discussed earlier, there was wide spread violations of CPR, including arbitrary arrests and detentions, torture and extrajudicial killings.<sup>82</sup>

Given the level of presidential control over the coercive forces, decisive action against their impunity cannot be taken without his influence. As such, the lack of support on his part has enhanced authoritarianism. As Lynne Henderson notes, authoritarianism need not be based only on active coercion or oppression of specific groups opposed to the government.<sup>83</sup> The latter can allow the development of a repressive culture through

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<sup>76</sup> Geschiere (n 66) 48; Bertelsmann Stiftung (n 57) 6.

<sup>77</sup> Geschiere (n 66) 48.

<sup>78</sup> Bertelsmann Stiftung (n 57) 6.

<sup>79</sup> See the Introduction to this thesis at 1.

<sup>80</sup> *ibid.*

<sup>81</sup> BBC News Africa, ‘Cameroon Head Blames Opposition’ (28 July 2008) <<http://news.bbc.co.uk/1/hi/world/africa/7267731.stm>> accessed 25 May 2012.

<sup>82</sup> Introduction to this thesis at 1-2.

<sup>83</sup> Lynne Henderson, ‘Authoritarianism and the Rule of Law’ (1991) 66(2) *Indiana Law Journal* 382, 382-383.

omission ‘by permitting other institutions or persons to coerce and oppress others in the interest of maintaining control’.<sup>84</sup> An example can be seen in the persistent attack on press and media freedoms to prevent publication of information critical of the President and other senior government officials – a situation which the government has failed to take decisive measures to address.<sup>85</sup> Another illustration is the failure of the government to take systematic measures to prevent the continuous use of torture by security forces.<sup>86</sup>

Presidential power with respect to the areas discussed above, have provided the means to reward government officials. That has in turn put those officials in a position to secure the interest of the regime regardless of how CPR may be affected. Personal rule in Cameroon or what has been recently described as ‘Biyaïsme’ has developed to the extent that all aspects of political, social and economic life are under ‘presidential siege’.<sup>87</sup> As discussed below, the position is further undermined by presidential control of the legislature.

## **2.2. Control of the Legislature and Legislative Process**

In Cameroon, law has been an instrumental mechanism for restricting CPR guaranteed in the Constitution. One factor that has facilitated the instrumentality of law in this way is the near monopoly of the process of the ‘production’ of law by the President.<sup>88</sup> The latter is vested with wide ‘regulatory’ powers and substantial control over the legislature without corresponding checks and balances on the same. In the absence of limitations, the powers facilitate ‘capture’ of the legislative process to advance government policies as defined by the President.<sup>89</sup> That position has facilitated the legalisation of executive repression through scrupulous enactment of new laws, modification of existing laws as

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<sup>84</sup> *ibid.*

<sup>85</sup> U. S. Department of State, ‘2008 Human Rights Report: Cameroon’ (25 February 2009) <[www.state.gov/j/drl/rls/hrrpt/2008/af/118990.htm](http://www.state.gov/j/drl/rls/hrrpt/2008/af/118990.htm)> accessed 25 May 2012.

<sup>86</sup> *ibid.*

<sup>87</sup> Thierry Amougou, *Biyaïsme: Le Cameroun au Pieu de la Médiocrité Politique de la Libido Accumulative et de la Décivilité* (L’Harmattan 2011).

<sup>88</sup> Production is used here to refer to the process of introduction of bills, deliberation, enactment and promulgation.

<sup>89</sup> Mathias E. O. Nguini, ‘Juristes-Savants, Droits de L’Etat et Etat de Droits au Cameroun’ (1998) 6(2) *Polis/ C.P.S.R.* 57; in the same volume, Alain D. Olinga, ‘Politique et Droit Electoral au Cameroun: Analyse Juridique de la Politique Electorale’ 40-41.

well as tactically pre-empting the enactment of legislation on CPR proposed by the opposition.<sup>90</sup> This subsection examines three principal areas through which presidential influence is exerted on the legislature and the legislative process.

### ***2.2.1. Residual and Delegated Legislative Powers***

Legislative power is primarily vested in Parliament which in theory is bicameral consisting of the National Assembly and Senate.<sup>91</sup> The Senate is an innovation of the 1996 Constitution. However it is yet to be formed because election to, and appointment of its members is dependent on an implementing legislation which is yet to be enacted.<sup>92</sup> In practice therefore, Parliament consist only of the National Assembly.<sup>93</sup> However, it is not the only legislative organ and its areas of competence have been specifically delineated. They include fundamental liberties, civil status, penal procedures, political, administrative and judicial organisation, financial and patrimonial matters, social and economic programme and the education system.<sup>94</sup> The reason for that delineation emanates from the fact that the President is authorised to exercise statutory authority<sup>95</sup> and to issue rules and regulations in the areas which do not fall under Parliament's competence.<sup>96</sup> A problem with the residual legislative power is that the absence of delineation makes it very broad. The danger is that it can provide opportunities for the President to undermine the exercise of rights guaranteed in primary legislation.

Those assertions can be supported by the fact that the implementation of some laws on CPR is left to enabling presidential decrees which determine the scope of the rights. This was the case with the Freedom of Social Communication Law (FSC).<sup>97</sup> Prior to 1990,

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<sup>90</sup> *ibid.*

<sup>91</sup> Constitution of Cameroon, art 14(1)(a)(b).

<sup>92</sup> *ibid* art 14(6)

<sup>93</sup> *ibid* art 67(3).

<sup>94</sup> *ibid* art 26(2)(a-f).

<sup>95</sup> *ibid* art 8(8).

<sup>96</sup> *ibid* art 27.

<sup>97</sup> The exercise of freedom of communication provided under Law No. 90/052 on the Freedom of Social Communication (FSC Law) is constrained by a plethora of presidential decrees regulating the private media and the profession (for instance Decree No. 91/249 of 1991 on the Identification of Journalists and

mass communication was monopolised by the state owned television station, Cameroon Radio and Television (CRTV). Under the FSC Law of 1990, the freedom of audiovisual communication was guaranteed subject to the conditions regulating the granting of licenses. At the time of its promulgation, the relevant regulatory instrument was to be enacted by decree.<sup>98</sup> However, the decree was not enacted until April 2000,<sup>99</sup> in effect delaying the exercise of that right for another ten years. Under that decree, licences are granted on a renewable five year basis for radio stations and ten years for television.<sup>100</sup> It also vests final decisional powers for granting licences on the Minister of Communication who is not guided in that respect by specific criteria.<sup>101</sup> The practise therefore is to refuse the renewal of licenses to those organisations usually critical of the government or to issue temporal licenses which can be suspended or revoked at the behest of the Minister.<sup>102</sup> This helps to censure the information provided by the media such that those that are apprehensive of having their licenses revoked or suspended tend not to be critical of the government.<sup>103</sup>

An illustrative case is *Open Society Justice Initiative (on behalf of Pius Njawe Noumenie) v Cameroon*<sup>104</sup> a complaint before the African Commission. In that case, the complainant applied to the Ministry of Communication for a broadcasting licence for the *Messenger Group*<sup>105</sup> to operate Radio Freedom FM. The Ministry failed to respond to this

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Auxiliaries of the profession and Decree No. 2000/158 on the Conditions and Modalities for the Creation and Exploitation of Private Audio-Visual Communication Enterprise).

<sup>98</sup> FSC Law, art 36(3).

<sup>99</sup> Decree No. 2000/158 of 03 April 2000 on the Conditions and Procedures for the Establishment of Private Broadcasters.

<sup>100</sup> FSC Law, arts 8 & 9.

<sup>101</sup> FSC Law, art 15. See also *Open Society Justice Initiative (on behalf of Pius Njawe Noumenie) v Cameroon* (2006) AHRLR 75(ACHPR 2006).

<sup>102</sup> *Open Society Justice Initiative* (n 101); Fanny Pigeaud, *Au Cameroon de Paul Biya* (KARTHALA 2011) 173-180; Amnesty International, 'Impunity Underpins Persistent Abuse' (29 January 2009) <[www.amnesty.org/en/library/info/AFR17/001/2009](http://www.amnesty.org/en/library/info/AFR17/001/2009)> accessed 15 May 2012, p. 18.

<sup>103</sup> *Open Society Justice Initiative* (n 101). See also Ewumbue Monono, 'The Right to Information and the 1990 Press Law in Cameroon' (1992) 6(3) *Africa Media Review* 19; McDonald Kalle, 'Deconstructing the Dialectics of Press Freedom and Communication in Cameroon' in Festus Eribo & William Jong-Ebot (eds) *Press Freedom and Communication in Africa* (Africa World Press 1997) 268.

<sup>104</sup> *Open Society Justice Initiative* (n 101).

<sup>105</sup> *Le Messenger* is one of the most prominent independent press organisations in Cameroon and very critical of the government. See Lyombe Eko, 'Hear all Evil, See all Evil, Rail all Evil: *Le Messenger* and Journalism of Resistance in Cameroon' in John Mbaku & Joseph Takougang (eds), *The Leadership Challenge in Africa: Cameroon under Paul Biya* (Africa World Press Inc. 2004).

application within the statutory period of six months. The complainant alleged that ‘the Ministry was in the habit of processing applications for operational licences in an arbitrary, illegal and discriminatory manner’. They also alleged that temporary licences were usually issued which did not provide any legal cover to operators of radio stations and could be withdrawn at any time. Moreover, the Ministry ‘tends to ban, in an arbitrary, discriminatory and politically motivated manner, existing operators from continuing to operate’.

In view of the above circumstances, the complainant proceeded to announce a date for the commencement of broadcasting. Ahead of the announced date, the Ministry banned the radio station, sealing its premises and confiscating the property of the complainant. The complainant faced further criminal proceedings initiated by the Ministry for operating a broadcasting station illegally. In fact, in a domestic civil claim in the same saga, the complainant had requested provisional measures to unseal the premises of the station and the return of its property. It took the Court of First Instance in Douala five months to declare that it had no jurisdiction and that it was to be referred to the Administrative Bench of the Supreme Court.

The Complainant alleged that the above facts constituted a breach of articles 1, 2, 9 and 14 of the African Charter on Human and Peoples’ Rights. However, the Commission did not decide on the merits of the case<sup>106</sup> as the parties eventually agreed to settle the matter.<sup>107</sup>

Further, with regard to presidential legislative powers, in other instances, the exercise of CPR is facilitated by institutions that are dependent on presidential decrees for their

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<sup>106</sup> Evans and Murray regret that the Commission did not consider the compatibility of the Ministry’s practices with provisions of the African Charter despite the allegation of systemic, widespread and institutional discrimination in the granting of licences. Malcolm Evans & Rachel Murray, *The African Charter on Human and Peoples’ Rights: The System in Practice, 1986-2006* (2<sup>nd</sup> ed, Cambridge University Press 2008) 224.

<sup>107</sup> However, the case was resubmitted to the Commission in 2007 following the failure of the government of Cameroon to meet its obligations pursuant to the agreement. See “*Open Society Justice Initiative: Freedom FM v. Cameroon*” <[www.soros.org/initiatives/justice/litigation/cameroon](http://www.soros.org/initiatives/justice/litigation/cameroon)> accessed on 16 June 2011.

establishment, regulation and appointment of personnel. The provisions of such decrees can be used to undermine the ability of those institutions to contribute positively to the realisation of CPR, for example, the national electoral commission, Elections Cameroon (ELECAM) which was created by an act of Parliament.<sup>108</sup> The law provides that ELECAM shall be an independent body responsible for organising, supervising and managing elections and referendum operations.<sup>109</sup> The date of its effective operation, remuneration of chief executive officers and appointment of its members depended on a presidential decree.<sup>110</sup> In 2008 the statutory twelve members of that institution were appointed<sup>111</sup> ten of whom were members of the ruling party.<sup>112</sup> The appointment was inherently inconsistent with the ELECAM Law which provided that membership of that institution was inconsistent with membership of a political party or supporting group.<sup>113</sup> Given its partisan composition and its dependence on the executive, the independence and impartiality of the institution appeared doubtful. Under those circumstances, ELECAM could not be relied upon as an institution capable of promoting democratic participation in Cameroon. Following repeated criticism, the law was amended to increase its membership to eighteen purportedly to reflect a broader representation.<sup>114</sup> In July 2011, prior to presidential elections scheduled to take place in October, six new members were appointed by presidential decree although the earlier ruling CPDM members were maintained.<sup>115</sup> Not unexpectedly, the incumbent President Biya won the election extending his twenty nine year rule for another seven years. The election was criticised by national and international observers for a number of reasons including the

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<sup>108</sup> Law No. 2006/011 of 29 December 2006 to Set up and Lay Down the Organisation and Functioning of Elections Cameroon (hereafter, ELECAM Law)

<sup>109</sup> ELECAM Law, s 1(2).

<sup>110</sup> ELECAM Law, ss 8(3), 20, 37, 38, 42(2), 43.

<sup>111</sup> Decree No. 2008/463 of 30 December 2008. A recent amendment has increased the membership to eighteen. See s 8(1) as amended by Law No. 2011/001 of 06 May 2011

<sup>112</sup> U.S. Department of State, 'Cameroon' in *Background Notes: Central Africa 2011* (InfoStrategist.com, 2011); Tansa Musa, 'E U Condemns Elections Management Transfer in Cameroon' (15 November 2009) <[www.newstimeafrica.com/archives/6216](http://www.newstimeafrica.com/archives/6216)> accessed 21 May 2012.

<sup>113</sup> ELECAM Law, s 13.

<sup>114</sup> ELECAM Law, s 8(1).

<sup>115</sup> See Cameroon Ministry of Justice, "'Report on Human Rights in Cameroon-2009'" <[www.spm.gov.cm/uploads/media/Rapport\\_Minjustice\\_Ang\\_2009.pdf](http://www.spm.gov.cm/uploads/media/Rapport_Minjustice_Ang_2009.pdf)> accessed on 12 March 2011. p 14, s 3 at para 73, in which the government rejected the U.N. Human Rights Committee's recommendation to amend the composition of ELECAM to conform with its laws.

ineffectiveness and lack of independence of ELECAM.<sup>116</sup> Given the central role of that institution in conducting free and fair elections in Cameroon, its institutional dependence militated against its ability to act impartially. The Commonwealth Expert Team that was invited to observe the election process emphatically recommended that concrete steps should be taken to enhance the independence of ELECAM.<sup>117</sup>

In addition to residual legislative powers, presidential dominance of the legislature and the legislative process can be gleaned from the regime of delegated powers. The Constitution states that:

...with regard to the subjects listed in Article 26 (2) above,<sup>118</sup> Parliament may empower the President of the Republic to legislate by way of ordinance for a limited period and for given purposes.<sup>119</sup>

Ordinances promulgated under that provision enter into force on the day of their publication and remain so as long as Parliament has not refused to ratify them.<sup>120</sup> Like the residual domain, the scope of delegated legislation is extensive. It does not indicate what the ‘given purposes’ may be. Arguably, the Constitution cannot contemplate all the possible circumstances under which delegated legislation may be necessary. Yet in the particular context of Cameroon where the President formulates government policy, has a disciplined parliamentary majority and substantial control of its party, it is unlikely that without specific criteria guiding the delegation of legislative powers, Parliament can be

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<sup>116</sup> Commonwealth Secretariat, ‘2011 Cameroon CET Presidential Election Report’ (London, 22 December 2011) <[www.thecommonwealth.org/files/242978](http://www.thecommonwealth.org/files/242978)> accessed 06 January 2012. See also International Freedom of Information Exchange, ‘RSF Urges Government to take Action on Media Reform in Mission Report’ <[www.ifex.org/cameroon/2011/10/06](http://www.ifex.org/cameroon/2011/10/06)> accessed 06 January 2012; Foundation for Democratic Advancement, ‘2011 Global Electoral Fairness Audit- Cameroon’s Presidential Electoral System’ 09 October 2011 <[http://foundationfordemocraticadvancement.blogspot.co.uk/2011/07/2011-fda-electoral-fairness-audit\\_24.html](http://foundationfordemocraticadvancement.blogspot.co.uk/2011/07/2011-fda-electoral-fairness-audit_24.html)>; Transparency International Cameroon (TIC), ‘09 October Presidential Election: Final Report of the Election Observation Mission’ (Yaoundé, 14 October 2011) 11 & 17 <[www.ti-cameroon.org/doc/Rapport%20final%20d'observation\\_Elections%20presidentielles\\_TI-C\\_eng.pdf](http://www.ti-cameroon.org/doc/Rapport%20final%20d'observation_Elections%20presidentielles_TI-C_eng.pdf)> accessed 14 July 2012.

<sup>117</sup> Commonwealth Secretariat, ‘2011 Cameroon CET Presidential Election Report’ (n 116).

<sup>118</sup> The subjects under art 26(2) are those specifically allocated to Parliament. See text to (n 94).

<sup>119</sup> Constitution of Cameroon, art 28(1).

<sup>120</sup> Constitution of Cameroon, art 28 (2)(3).



relied upon to ensure that delegated powers are not used to promote policies which may inhibit the exercise of CPR.

Moreover, the Constitution provides no guidelines or standards regulating the exercise of delegated power. For the purpose of minimising the potential for abuse of that power, the provision of a structure within which delegated powers are exercised is important. In the absence of a constitutional provision to that effect, it presumably will be determined by the enabling legislation. The danger is that, that legislation will be enacted by a Parliament subject to the President. As such, it is possible to envisage a situation where Parliament will merely endorse a structure proposed or imposed by the President. That lacuna combines to create extensive capacity for the President to usurp legislative powers to pursue objectives that can be detrimental to the enforcement of CPR. This is the case with the Cameroonian Penal Code promulgated by an ordinance which dates back to the era of former President Ahidjo.<sup>121</sup> That Law has been amended through the years but has substantially preserved the original provisions some of which undermine the exercise of CPR. For instance, section 347 which criminalises acts of consensual sexual relations between adults of the same gender. A number of people have been arrested and imprisoned on the basis of that provision.<sup>122</sup> The Law will remain in force until it is repealed by Parliament.

Although delegation of legislative power is not unusual, exercise of such powers should be circumscribed by the provision of clear limits on their exercise.<sup>123</sup> In Germany for instance, the legislature is required to provide clear guidelines for the content of regulations.<sup>124</sup> Caroline Morris and Ryan Malone assert that the ability of the executive to utilise delegated powers to implement its policy preferences without parliamentary

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<sup>121</sup> Law No.67/LF/1 of 12 June 1967 Introducing the Cameroonian Penal Code.

<sup>122</sup> Human Rights Watch; 'Cameroon: Court Upholds Unjust 'Homosexuality' Conviction' (18 December 2012) <[www.hrw.org/news/2012/12/18/cameroon-court-upholds-unjust-homosexuality-conviction](http://www.hrw.org/news/2012/12/18/cameroon-court-upholds-unjust-homosexuality-conviction)> accessed 18 December 2012; Amnesty International, 'Cameroon Urged to Overhaul Laws Criminalising Gay Relationships' (5 March 2012) <[www.amnesty.org/en/for-media/press-releases/cameroon-urged-overhaul-laws-criminalizing-gay-relationships-2012-03-05](http://www.amnesty.org/en/for-media/press-releases/cameroon-urged-overhaul-laws-criminalizing-gay-relationships-2012-03-05)> accessed 29 August 2012.

<sup>123</sup> In South Africa for instance, delegated power may be struck down by the Constitutional Court if there are no clear standards or guidelines regulating their exercise. Ziyad Motala & Cyril Ramaphosa, *Constitutional Law: Analysis and Cases* (Oxford University Press 2002) 210-211.

<sup>124</sup> See Judicial Qualifications case, BVerfGE 52, cited in Motala & Ramaphosa (n 123) 211.

oversight is particularly inimical to the exercise of fundamental rights.<sup>125</sup> This is partly due to the fact that governments may seek to maintain their hold on power and if that objective can be achieved through policy facilitated by delegation, then individual liberties which conflict with those policies may be undermined as a result of their implementation.<sup>126</sup>

In the case of Cameroon, both the residual and delegated powers of the President serve to further alter the balance of power to his advantage and undermine the extent to which Parliament can use its legislative powers to enhance the realisation of CPR.

### ***2.2.2. The Legislative Process and Admissibility Criteria***

In addition to residual and delegated legislative powers, the President is given priority in the introduction of bills for consideration by Parliament. The admissibility criteria give pre-eminence to the consideration of government bills and private member bills *accepted by the government*, while bills initiated by the President override all others in terms of the order of consideration.<sup>127</sup> Any other private member bills are considered subsequently and this may only occur three subsequent sittings after a bill was originally admitted.<sup>128</sup> This is a formidable tool in the hands of the government as it has been used tactically to prevent the consideration of bills from the opposition by interminably postponing consideration.<sup>129</sup>

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<sup>125</sup> Caroline Morris & Ryan Malone, 'Regulations Review in the New Zealand Parliament' (2004) 2 *Macquarie Law Journal* <[www.austlii.edu.au/au/journals/MQLJ/2004/2.html](http://www.austlii.edu.au/au/journals/MQLJ/2004/2.html)> accessed 12 June 2012.

<sup>126</sup> *ibid.*

<sup>127</sup> Constitution of Cameroon, arts 18(4), 23(4) & 29(2).

<sup>128</sup> *ibid* art 18(4).

<sup>129</sup> It has been reported that since 1991, all laws enacted have emanated from government bills and between 1992 and 2009, the President initiated all laws enacted. See Refworld, 'Freedom in the World 2011-Cameroon' (May 2011) <[www.unhcr.org/refworld/country,,FREEHOU,,CMR,,4dcbf51ec,0.html](http://www.unhcr.org/refworld/country,,FREEHOU,,CMR,,4dcbf51ec,0.html)> accessed 09 February 2012; Puddington, Piano and Neubauer, *Freedom in the World: Annual Survey of Political Rights and Civil Liberties* (Rowman & Littlefields 2009) 140; U.S. Embassy in Cameroon, 'Human Rights Practices in Cameroon – 2006' (Yaoundé, March 2007) <[http://yaounde.usembassy.gov/cmr\\_human\\_rights.html](http://yaounde.usembassy.gov/cmr_human_rights.html)> accessed 12 March 2011, where it is argued that bills come rarely from the opposition and all the laws voted originate from the government. See also Kankeu (n 37) 171.

A case in point is the opposition's proposals for the adoption of a harmonised electoral code. That proposal had been made repeatedly by the opposition since 1991 on the supposition that it was necessary for promoting the democratisation process.<sup>130</sup> Lacking support from the government and Parliament, consideration of the reform bill was persistently postponed and was eventually rejected.<sup>131</sup> One of the important arguments made by the opposition to support the need for a harmonised electoral code was the bewildering legislative landscape that characterised the election process.<sup>132</sup> There was a vast array of legislative instruments and institutions with contradictory and confounding responsibilities.<sup>133</sup> This made the electoral process opaque and difficult to navigate.

It has been argued that the multiplication of legislative instruments and institutions is a deliberate government strategy to undermine the ability of the opposition to have equal access to and participation in the electoral process.<sup>134</sup> By making the electoral landscape complex and indeterminate to the opposition, the government would be at an advantage by virtue of the fact that it is conversant with the relevant laws and their various requirements. So, government officials can tactically reject the candidacy of opposition candidates for some obscure reason or fail to register or provide voting cards for electorates by referring to some law which is largely unknown or perhaps prescribes non-existent or ambiguous requirements. A case in point is *Benz Enow Bate v ELECAM*<sup>135</sup> an electoral petition decided by the Supreme Court. The facts, briefly were that, the candidacy of the petitioner in the 2011 presidential election was rejected on the ground that the declaration of his candidacy failed to provide a legalised signature as required by section 52 of the Law Laying Down the Conditions for Presidential Elections. The Supreme Court upheld the initial decision of ELECAM to reject the candidacy on the

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<sup>130</sup> Olinga (n 89) 38-40, 41-42.

<sup>131</sup> *ibid* 41-42.

<sup>132</sup> *ibid*.

<sup>133</sup> For instance ELECAM Law; Law No. 92/10 of 17 September 1992 to Lay Down the Conditions for the Vacancy and Election of a President as amended by Law No. 2011/002 of 06 May 2011; Law No. 92-002 of 14 May 1992; Law No. 2000/015 of 19 December 2000 on Public Funding for Political Parties; Law No. 2004/004 of 21 April 2004 on the Organisation and Functioning of the Constitutional Council.

<sup>134</sup> Olinga (n 89) 41-42; Transparency International Cameroon, '09 October Presidential Election' (n 116)14.

<sup>135</sup> *Benz Enow Bate v ELECAM*, Decision No. 13/CEP/CS of 20 September 2011(unreported) but discussed in Transparency International Cameroon, '09 October Presidential Election' (n 116) 37.

basis that the word ‘legalised’ should have appeared in the document to indicate the signature was legalised. However, section 52 of the relevant law did not specifically state that.<sup>136</sup>

The debate on a harmonised electoral code was subsequently revived in 2005 and partly as a result of growing international and domestic pressure, one was finally adopted by Parliament in April 2012.<sup>137</sup> It is worthy to note that the bill was introduced by the President. The Code has already come under criticism for entrenching the system of granting electoral advantages to the ruling party.<sup>138</sup>

The system of admissibility of bills further exposes the weaknesses of Parliament as it seems incapable of directing the legislative process. According to a report issued by the *Bertelsmann Stiftung* in 2012, the legislature in Cameroon was described as weakened by overwhelming presidential influence.<sup>139</sup> The report further stated that, the overwhelming majority held by the ruling party ensured that Parliament was subject to the wishes of the executive and almost no initiative originated from Parliament.<sup>140</sup> Matthias Nguini has also argued that Presidential control of Parliament facilitates the government’s ability to limit the exercise of CPR while appearing to be liberalising the political space to allow for their more effective exercise.<sup>141</sup> With reference to the 1990 Liberty Laws, Nguini argued that while the government purported to provide various CPR unavailable in the Ahidjo regime, the incumbent President Biya’s ability to control the legislative process meant that the provisions of the Liberty Laws were used to limit their exercise for public

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<sup>136</sup> See also *Mbetene Eyabe Justin v ELECAM*, Decision No. 15/CEP/CS of 20<sup>th</sup> September 2011(unreported) and *Louis Tobie Mbida v ELECAM*, Decision No. 12/CEP/CS of 20<sup>th</sup> September 2011(unreported) where the candidacy of the petitioners was rejected for similar reasons.

<sup>137</sup> Law N°2012/001 of 19 April 2012 on the Electoral Code.

<sup>138</sup> See Guy Dzudie, ‘Cameroun: L’Opposition Camerounaise appelle au Boycott de défilé du 20 Mai’ <[www.camer.be/index1.php?art=19309&rub=6:1](http://www.camer.be/index1.php?art=19309&rub=6:1)> accessed 19 June 2012; Choves Lore, ‘Cameroon: Opposition for New Electoral Code’ *Cameroon Tribune*, (Yaoundé, 27 August 2012) <[allafrica.com/stories//201208301091.html](http://allafrica.com/stories//201208301091.html)> accessed 19 June 2012.

<sup>139</sup> Bertelsmann Stiftung (n 57) 7.

<sup>140</sup> *ibid.*

<sup>141</sup> Nguini (n 89) 57.

policy reasons.<sup>142</sup> Two examples will be noted here with regard to the laws, first, on public assembly and, second freedom of communication.

A brief examination of the law regulating freedom of assembly demonstrates how some of its provisions grant wide discretion to executive officials to restrict the exercise of that right.<sup>143</sup> Section 3 of that law requires the relevant administrative officials to be informed through a declaration of intent, three days in advance of the intention to organise a public gathering. The official is required to acknowledge receipt of the declaration.<sup>144</sup> Although the law does not explicitly require that approval be granted, officials have interpreted the requirement to issue receipts as constituting authorisation such that a failure to issue receipts amounts to a prohibition of the intended meeting.

A fairly recent event demonstrates how the receipt requirement can constitute a weapon to suppress free assembly. On 30 November 2011, the Minister Delegate in the Ministry of Justice (Maurice Kamto) made an exceptional move by resigning from the government.<sup>145</sup> His resignation was announced through a letter published by several press organisations. On 19 January 2012, Kamto made a declaration of intent to organise a press conference on 25 January, to explain the reasons for his resignation.<sup>146</sup> The relevant administrative official, the Sub-Divisional Officer (SDO) for Yaoundé V, refused to grant a receipt on the ground that the letter on 30 November provided sufficient explanation and therefore no further explanations were necessary. Moreover, according to the SDO, an attempt by Kamto to revisit those reasons through a press conference could only constitute '*une menace à l'ordre public que je ne saurais cautionner*'.<sup>147</sup> Through an administrative order he went further to ban all public assemblies within the Yaoundé V area and called on the forces of law and order to ensure enforcement.<sup>148</sup> No further

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<sup>142</sup> *ibid.*

<sup>143</sup> Law No. 90/55 of 19 December 1990 relating to Public Meetings, Processions and Parades (PMPP Law).

<sup>144</sup> PMPP Law, s 4.

<sup>145</sup> Etah Oben, 'Biya Faces Second Resignation Ever from His Cabinet' <<http://allafrica.com/stories/201112020114.html>> accessed 12 December 2011.

<sup>146</sup> Stéphane Tchakam, 'Maurice Kamto Interdit de Conférence de Presse' *Le Jour* (Yaoundé, 25 Jan 2012) <[www.quotidienlejour.com/actualites/politiques/8768](http://www.quotidienlejour.com/actualites/politiques/8768)> accessed 25 January 2012.

<sup>147</sup> Translated as 'a threat to public order which I cannot condone' (author's translation).

<sup>148</sup> Arrêté No. 001/A/JO6.05/SP.

explanations were provided as to how the press conference would indeed constitute a threat to public order. Kamto, however, subsequently circulated another letter through the press in which he indicated some of the reasons which precipitated his resignation. Essentially, he was displeased with government inertia, tribalism and the level of corruption amongst government officials and failure of the leadership to impose adequate sanctions. Given the Cameroonian context in which criticism of the regime is untenable, the SDO seemed compelled to prohibit the press conference.<sup>149</sup>

The FSC Law grants similar discretionary powers to administrative authorities who can apply those powers to restrict its exercise.<sup>150</sup> For instance the law provides that an administrative authority may order the seizure of publications of a press organisation which is deemed to have violated public policy principles.<sup>151</sup> Alternatively, the sale of such publications may be banned by the Minister of Territorial Administration.<sup>152</sup> Owing to the ambiguity of the law in terms of distinguishing the ‘press’ from the ‘media’ administrative authorities interpret both to fall under the same category. Consequently, there is interference with media organisations broadcasting information containing criticism of government officials.<sup>153</sup> The discretionary power provides one of the most formidable mechanism by which administrative authorities restrict press freedom. It is used to prevent the dissemination of information exposing corrupt practices of government officials or publications criticising government officials or policies.<sup>154</sup> In 2008, for instance, the Paris based *Rapporteurs sans frontières* reported that on June 8, government officials had ordered that a TV program (which focused on a corruption scandal involving senior government officials like the PM) broadcast by Canal 2

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<sup>149</sup> Kamto has now formed an umbrella political movement comprising some existing opposition political parties. On the day of the official launching of that movement, security officers accompanied by the SDO attempted to disperse the assembly for similar reasons as the previous press conference. See R.N.T, ‘Repression: Conférence interdite de Kamto’ *Le Messenger* (Douala 16 August 2012) <[www.cameroon-info.net/stories/0,36796,@,conference-interdite-de-maurice-kamto-rene-sadi-l-objet-a-ete-change-fogue-tedom.html](http://www.cameroon-info.net/stories/0,36796,@,conference-interdite-de-maurice-kamto-rene-sadi-l-objet-a-ete-change-fogue-tedom.html)> accessed 16 August 2012.

<sup>150</sup> FSC Law as amended by Law No. 96/04 of 04 January 2006.

<sup>151</sup> FSC Law, s 17(1).

<sup>152</sup> FSC Law, s 17(1).

<sup>153</sup> Pigeaud (n 102) 173-180

<sup>154</sup> *ibid* 173-180.

International be taken off the air.<sup>155</sup> In 2003, twelve independent broadcasting organisations that were usually critical of the government were either closed down or were denied the right to renew their licences.<sup>156</sup> Again, on April 14, 2003, security forces raided the offices of a local press organisation *Mutations*, seizing equipment and a disk containing that day's edition of the paper which was alleged to have contained an article critical of the President.<sup>157</sup>

By and large, though Parliament has the principal responsibility to legislate on fundamental rights issues, constitutional provisions, and the fact of the ruling party's disciplined overwhelming majority make Parliament more an instrument for the consolidation of government policies as directed by the President, than a legislative institution that can be relied upon to enhance the realisation of CPR.<sup>158</sup>

### **2.2.3. Dissolution Powers**

In addition to the above, presidential omnipotence is intensified by powers to dissolve Parliament. The Constitution provides that:

The President of the Republic may, if necessary and after consultation with the Government, the Bureaux of the National Assembly and the Senate, dissolve the National Assembly...<sup>159</sup>

There are at least three problems that can be identified with that provision with regards to checks and balances. Firstly, the President merely *consults* the relevant institutions rather than acquire their assent. It is doubtful that any objection on their part would be complied with.<sup>160</sup> Secondly, the circumstances under which dissolution can occur are vaguely defined. Any situation unfavourable to the President can qualify as 'necessary' given that

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<sup>155</sup> Amnesty International (AI), 'Impunity Underpins Persistent Abuse' 22 (29 January 2009) <[www.amnesty.org/en/library/info/AFR17/001/2009](http://www.amnesty.org/en/library/info/AFR17/001/2009)> accessed 15 May 2012.

<sup>156</sup> *ibid* 18.

<sup>157</sup> *ibid*. See also Pigeaud (n 102) 178.

<sup>158</sup> Kankeu (n 37) 171.

<sup>159</sup> Constitution of Cameroon, art 8(12).

<sup>160</sup> Kankeu (n 37) 171.

it is solely his responsibility to determine the qualifying circumstances. Thirdly and perhaps more problematic is the fact that, such a decision is unlikely to be subject to judicial review.<sup>161</sup> That is so because it falls within the spectrum of what is known as ‘acts of the government’ which under the French doctrine of *actes de gouvernement* cannot be reviewed by any court.<sup>162</sup> Those three weaknesses make dissolution an absolute and potent weapon which further undermines whatever scope of oversight Parliament could have on the President. Although the fact of the current parliamentary majority may provide no incentive for the President to invoke that power, its availability can have a pre-emptive effect on parliamentary initiative.<sup>163</sup>

Dissolution can be a latent weapon to control a legislature that would otherwise exercise effective oversight on the executive.<sup>164</sup> In Niger, President Mamadou Tanja dissolved Parliament in 2009 following a failed attempt to amend constitutional provisions which prevented him from running for a third term.<sup>165</sup> While presidents in highly presidential semi-presidential regimes may be vested with some dissolution powers, these are usually circumscribed.<sup>166</sup> For instance the Namibian provision on dissolution power limits the discretion of the President. He may dissolve Parliament ‘on the advice of Cabinet if the Government is unable to govern effectively’.<sup>167</sup> Moreover, it creates a form of constraint which may diminish incentives to resort to its use. If Parliament were to be dissolved, the President will equally be subjected to re-elections at the same time that a new Parliament

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<sup>161</sup> There is no jurisprudence on dissolution power in Cameroon and therefore no certain way of determining what the courts’ attitude would be if it were faced with such a matter. Speculatively, the jurisprudence of the French *Conseil d’Etat* on the doctrine of *actes de gouvernement* may provide some indication. This point is discussed further in ch 5 which deals with judicial review.

<sup>162</sup> Law No. 2006/022 of 29 December 2006 relating to the Organisation and Functioning of Administrative Courts, art 4; *Kouang Guillaume Charles*, Jugement No. 53/CS-CA of 26 June 1990.

<sup>163</sup> Since 1990, parliament has been dissolved once. In 1992 it was prematurely dissolved to bring forward legislative elections due to take place in 1993. This move was widely believed to be a strategy by the President to minimise the opposition’s potential to mobilise in time for the elections. See Inter Parliamentary Union, ‘Cameroon (National Assembly)’ (27 August 2007) <[www.ipu.org/praline-e/reports/Ctr/parlementaire/2053\\_F.htm](http://www.ipu.org/praline-e/reports/Ctr/parlementaire/2053_F.htm)> accessed 02 February 2012.

<sup>164</sup> Kankeu (n 37) 171.

<sup>165</sup> BBC News, ‘Niger Leader Dissolves Parliament’ <<http://news.bbc.co.uk/1/hi/world/africa/8067831.stm>> (UK, 26 May 2009) accessed 29 June 2011.

<sup>166</sup> Shugart, ‘Semi-Presidential Systems’ (n 3) 341.

<sup>167</sup> Constitution of the Republic of Namibia, arts 32(3), 57(1). Available at <[www.wipo.int/wipolex/en/details.jsp?id=9404](http://www.wipo.int/wipolex/en/details.jsp?id=9404)> accessed 02 February 2012.



is elected.<sup>168</sup> This may prove detrimental where he has lost popularity and the threat of losing elections may inhibit any aspiration to dissolve Parliament for unconstitutional reasons.

### **2.3. Decree Powers and Constitutional Exceptionalism**

Another contributory factor to the imperial presidency is the presidential monopoly over the control of states of emergencies. As discussed below, the Constitution grants wide powers without sufficient oversight from the legislature or the judiciary thereby failing to protect against the threats to CPR in the event of a state of emergency. In order to understand the weaknesses of the system, a brief examination of some normative standards provided by the Human Rights Committee, under article 4 of the ICCPR is deemed relevant. The ICCPR has been incorporated into domestic law in Cameroon and as per the Constitution overrides national laws.<sup>169</sup> It seems appropriate that it should form part of the standards by which to assess the emergency regime in Cameroon.

#### ***2.3.1. The ICCPR and States of Emergencies***

Although constitutionalism requires the imposition of limits on governmental powers, governments also have to be empowered to deal with certain emergency situations which may threaten the existence of a state and the ordinary functioning of its institutions.<sup>170</sup> So, it has become customary for national constitutions to include provisions granting exceptional powers to the executive or other institutions to address contemplated exigencies<sup>171</sup> for the ‘conservative’ purpose of restoring the proper functioning of the state’s institutions and protecting CPR.<sup>172</sup> However, the exercise of exceptional powers is

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<sup>168</sup> Constitution of Namibia, art 57(2). See also Shugart, ‘Semi-Presidential Systems’ (n 3) 341.

<sup>169</sup> Constitution of Cameroon, art 45.

<sup>170</sup> John Ferejohn & Pasquale Pasquino, ‘The Law of the Exception: A Typology of Emergency Power’ (2004) 2(2) *International Journal of Constitutional Law* 210; Oren Gross, ‘Constitutions and Emergency Regimes’ in Ginsburg & Dickson (eds), *Comparative Constitutional Law* (Edward Elgar Publishing 2011) 334.

<sup>171</sup> Claudio Grossman, ‘A Framework for the Examination of States of Emergency Under the American Convention on Human Rights’ (1986) 1(1) *American University International Law Review* 35, 35; Evan Creddle & Evan Fox-Decent, ‘Human Rights, Emergencies and the Rule of Law’ (2012) 34(1) *Human Rights Quarterly* 39, 45.

<sup>172</sup> Ferejohn & Pasquino (n 170) 210.

prima facie in tension with constitutionalism as it requires a partial suspension of the legal order existing under ordinary times. This is a particularly precarious situation from a CPR perspective because suspension of the legal order threatens the rule of law as dealing with the emergency requires the introduction of new legislation which ostensibly curtails the exercise of CPR.<sup>173</sup> It is through the exercise of such powers that executive authorities can engage in massive violations of CPR in the guise of containing an emergency.<sup>174</sup> Their exercise should therefore be stringently regulated.

International law provides some normative benchmarks for regulating states of emergency. In so doing it can fill gaps in domestic law which can provide wide powers to restrict CPR during emergencies.<sup>175</sup> Although the effectiveness of international law may be constrained for reasons related to its reliance on state compliance, it still provides a useful means to limit unjustified recourse to the use of emergency powers.<sup>176</sup>

The U.N. Human Rights Committee<sup>177</sup> provides some normative standards to be observed by states in pursuance of exigencies under article 4(1) of the ICCPR:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

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<sup>173</sup> Creddle & Fox-Decent (n 171) 45-46; Grossman (n 171) 35-36.

<sup>174</sup> *ibid.*

<sup>175</sup> Grossman (n 171) 38; Stephen Gardbaum, 'Human Rights and International Constitutionalism' (2009) UCLA School of Law Research Paper No. 08/01, 30-33 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1088039](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1088039)> accessed 29 August 2012.

<sup>176</sup> Joseph Weiler, 'The Geology of International Law - Governance, Democracy and Legitimacy' (2004) 64 *ZaöRV* 547, 558-561.

<sup>177</sup> Human Rights Committee, 'General Comment 29: States of Emergency (Article 4)' UN Doc. CCPR/C521/Rev.1/Add.11 (2001).

The ICCPR does not specifically define a state of emergency. But as per the Human Rights Committee (HRC), before an emergency is proclaimed, ‘the situation must amount to a public emergency which threatens the life of a nation’.<sup>178</sup> The Siracusa Principles<sup>179</sup> have gone further to substantiate on the characteristics of an emergency. Thus, a state must be faced with ‘a situation of exceptional and actual or imminent danger which threatens the life of the nation’.<sup>180</sup> With respect to a threat, it must be of a nature that it:

- a) Affects the whole of the population and either the whole or part of the territory of the State, and
- (b) Threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognised in the Covenant.<sup>181</sup>

Further, internal conflicts or unrest which do not constitute a threat as described above do not justify derogations under article 4(1).<sup>182</sup>

The criteria developed by the HRC and under the Siracusa Principles reflect the earlier jurisprudence of the European Court of Human Rights under article 15 (1) of the European Convention on Human Rights.<sup>183</sup> In *Lawless v Ireland*,<sup>184</sup> the Court described an emergency as:

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<sup>178</sup> General Comment 29, para 2.

<sup>179</sup> Human Rights Committee, ‘The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights’ 28 September 1984, U.N. Doc. E/CN.4/1985/4.

<sup>180</sup> *ibid* Principle 39.

<sup>181</sup> *ibid*.

<sup>182</sup> *ibid* Principle 40. According to Bruce Ackerman, the paradigm case for the declaration of state of emergency is an imminent threat to the very existence of the state for which empowerment of the executive would be necessary to preserve the existence of the state. Ackerman, ‘The Emergency Constitution’ (2004) 113 *Yale Law Journal* 1029, 1031.

<sup>183</sup> European Convention on Human Rights, art 15(1) states that, ‘In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law’.

<sup>184</sup> *Lawless v Ireland* (No.3) (App. 332/57) Judgment of 01 July 1961.

[A]n exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the state is composed.

The above criteria were developed further by the European Commission on Human Rights in the *Greek Case*.<sup>185</sup> The Commission held that an emergency must be actual or imminent, must affect the whole population, the continuance of the organised life of the community must be threatened and the normal measures permissible under the Convention to maintain public order and safety were inadequate to deal with the emergency.<sup>186</sup>

Under the ICCPR, in addition to satisfying the conditions discussed earlier, a state of emergency must be officially proclaimed.<sup>187</sup> That is important to preserve the principles of legality and the rule of law.<sup>188</sup> Once a proclamation has been made, other normative standards apply. Resort may be had to the principle of proportionality which requires measures undertaken to be limited to the extent strictly required by the exigency in question.<sup>189</sup> For instance it is necessary that states of emergency be short-lived and last only as long as the emergency and be limited in material scope and the geographical regions under threat.<sup>190</sup> The ICCPR also prohibits the suspension of non-derogable rights such as the right to life and freedom from torture, genocide and arbitrary detention.<sup>191</sup> Other freedoms such as movement, association and expression may be limited but only to the extent that is strictly necessary for containing the state of emergency.<sup>192</sup> Judicial review of executive actions should be available, as well as the necessity for the

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<sup>185</sup> *Greek Case*, 12 YB1 Ecom HR (1969).

<sup>186</sup> *ibid.*

<sup>187</sup> General Comment 29, para 2, Siracusa Principle 42.

<sup>188</sup> General Comment 29, para 2.

<sup>189</sup> General Comment 29, para 4; Siracusa Principle 51. See also Creddle & Fox-Decent (n 171) 49-50.

<sup>190</sup> General Comment 29, para 4. Gross (n 170) 340.

<sup>191</sup> See, General Comment 29, paras 4(2), 6, 7, 8(1) (2), 11, 15, 16, 18, 27. See also Sara Joseph, 'Human Rights Committee: General Comment 29' (2002) 1 *Human Rights Law Review* 81; Charles Fombad, 'Cameroon's Emergency Powers: Recipe for (Un)Constitutional Dictatorship' (2004) 48(1) *Journal of African Law* 62, 73-74.

<sup>192</sup> ICCPR, art 4(1); General Comment 29, paras 4, 5, 6. See also Creddle & Fox-Decent (n 171) 49-50.

observance of due process guarantees and the independence of the judiciary.<sup>193</sup> A system so designed, is intended to mitigate the transformation of an emergency into a perpetual state of executive tyranny where CPR could be subject to massive violations ostensibly authorised by law.

It is against this legal background that the Cameroonian Constitution can be judged.

### ***2.3.2. The Emergency Regime in Cameroon***

The emergency regime in Cameroon is provided for by the Constitution which vests the President with power to legislate by decree in case of emergencies or a state of siege. Article 9(1) and (2) respectively state that:

The President of the Republic may, where circumstances so warrant, declare by decree a state of emergency which shall confer upon him such special powers as may be provided for by law.

In the event of a serious threat to the nation's territorial integrity or to its existence, its independence or institutions, the President of the Republic may declare a state of siege by decree and take any measures as he may deem necessary. He shall inform the Nation of his decision by message.

Three fundamental issues arise from the above provisions which render the emergency regime a 'recipe for constitutional dictatorship';<sup>194</sup> the definition of an emergency situation or state of siege; the powers conferred on the President and the absence of sufficient checks and balances during these exceptional periods.

The Constitution is silent on the potential circumstances that constitute a state of emergency. However, there is a regulatory instrument on states of emergency and it is therein defined as:

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<sup>193</sup> General Comment 29, paras 11, 15, 16; Siracusa Principle 51.

<sup>194</sup> See generally Fombad, 'Cameroon's Emergency Powers' (n 191).

[A]n occurrence which, by its nature and gravity, is considered a national disaster, or a series of disturbances undermining public order or the security of the state, or a foreign invasion.<sup>195</sup>

On the face of it, the provision appears to contemplate circumstances which may transcend ordinary disasters or public disturbances, to the extent that they affect the security of the state. However, besides ‘foreign invasion’, a missing element which is a fundamental consideration is the idea of a ‘threat to the life of a nation’ which is overshadowed by the lesser conditions provided. An event may be so great as to constitute a national disaster that can undermine state institutions without necessarily imperilling their normal functioning. Further, a series of disturbances can undermine public order and security but may still be dealt with by ordinary means of law enforcement albeit with increased resource capacity. With regards to the state of siege, the Constitution appears to reflect the severity contemplated by international law as it permits a declaration when the nation’s territorial integrity, existence and independence are under serious threat.

Charles Fombad however asserts that there is no indication as to what constitutes a ‘threat’ and how ‘seriousness’ is determined.<sup>196</sup> In that respect, he opines that the provision potentially accommodates unjustified invocation of emergency powers due to its vagueness. Although that may be the case, it is as Fombad himself concedes, impracticable to specifically anticipate the myriads of perilous circumstances that a country might be confronted with.<sup>197</sup> As such, it is not unusual that the Constitution does not outline the specific circumstances that constitute a threat or count as serious. The more significant issue though, is as discussed below the failure of the law to pre-empt potential abuse by vesting the power to make such considerations solely in the President.

In both cases (state of emergency and siege), the determination of the circumstances under contemplation is in the subjective opinion of the President who is under no

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<sup>195</sup> Law No. 90/47 of 19 December 1990 on the State of Emergency, art 1.

<sup>196</sup> Fombad, ‘Cameroon’s Emergency Powers’ (n 191) 70.

<sup>197</sup> *ibid.*

obligation to consult any other institution. This is, indeed, a threat to constitutionalism as the President is empowered to act without regard to the other institutions that would otherwise provide objective appreciation of the perceived circumstances. In the absence of parliamentary oversight and more stringent conditions to determine emergency situations, it is probable that emergency powers could be invoked for purely political reasons to suit the personal whim of the President.<sup>198</sup> The situation is even more precarious in the light of the fact that he is vested with powers to ‘take any measures as he may deem necessary’. Again, it is subjective and the President has no obligation to consult any institution with regards to measures undertaken or contemplated, to ensure they are strictly necessary in the circumstance. This is, as Fombad has remarked, a ‘*carte blanche*’ for arbitrary presidential action.<sup>199</sup> It fails to take cognisance of the principle of proportionality, by virtue of which measures taken must be strictly limited to the extent required by the exigency.<sup>200</sup> Such a broad statement allows for egregious and unjustifiable violations of CPR.

The situation is further exacerbated by the fact that the emergency law vests administrative and security officers with wide powers which are susceptible to abuse. Section 5(6) permits the detention of persons without charge for seven days by the Prefect, fifteen days by the Governor and two months (renewable once) by the Minister of Territorial Administration. These are lengthy periods for which the law provides little safeguards by way of justifying their necessity. A victim may be subjected to detention for up to, or longer than four months, even beyond the subsistence of the emergency. The law imposes a time limit of three months for a state of emergency to last although it can be renewed once for an additional period of three months.<sup>201</sup>

In the absence of legislative oversight, the only alternative is judicial review. As will be discussed in detail in Chapter 5, the mechanisms for judicial review are ineffective. Worthy of note here is that ordinary citizens whose rights are likely to be affected by the

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<sup>198</sup> Fombad, ‘Cameroon’s Emergency Powers’ (n 191) 89.

<sup>199</sup> *ibid* 68.

<sup>200</sup> General Comment 29, para 4. See also Max Herbert, ‘The Emergency Power and Civil Liberties in Canada’ (1970) 16 *McGill Law Journal* 39, 74.

<sup>201</sup> Emergency Legislation, ss 2, 3(a).

emergency regulation do not have access to constitutional review.<sup>202</sup> Moreover, under the doctrine of *actes de gouvernement*,<sup>203</sup> it is unlikely that a presidential decree promulgating a state of emergency would be subject to review. With regard to review of administrative acts, there are physical, economic and procedural difficulties associated with access to the Supreme Court which, until March 2012 had exclusive jurisdiction in that respect. But more fundamentally, the judiciary lacks independence and therefore unlikely to provide sufficient restraint on authorities exercising power under an emergency regime. Thus in effect, in the absence of adequate judicial or legislative oversight, the emergency regime appears to be a recipe for a constitutional dictatorship.

In some jurisdictions, emergency regimes are more robustly structured to pre-empt arbitrary exercise of emergency powers. Moreover, some indication may be provided as to what constitutes an emergency, accompanied by provisions stipulating which institution(s) can determine whether particular circumstances fulfil the criteria for a state of emergency.<sup>204</sup> The South African emergency regime appears to provide a balance between exceptional powers and checks and balances. For instance, a state of emergency may be declared only on the basis of an Act of Parliament when the nation is threatened by war, national disaster or other public emergency and a declaration is vital for the restoration of order.<sup>205</sup> Any legislation or measures taken in that respect may only be effective prospectively and for no longer than twenty one days from the date of the declaration. However, the National Assembly may extend this period for no more than

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<sup>202</sup> Access to the Constitutional Council is restricted to the President of the Republic, the President of the National Assembly, the President of the Senate, one-third of the members of the National Assembly or Senate. See Constitution of Cameroon, arts 47(2) (3); Law No. 2004/004 of 21 April 2004 on the Organisation and Functioning of the Constitutional Council, art 19(1).

<sup>203</sup> Text to (n 162).

<sup>204</sup> In Germany for instance, the Basic Law for the Federal Republic (Basic Law) as amended by Act of 21 July 2010, defines a state of emergency (or 'defence' as is therein referred) as when the country is under armed attack or is threatened with imminent attack and the legislature has the primary responsibility to make a declaration (German Basic Law, art 115(a)1). Although where it is not possible for the legislature to be convened, such powers may be exercised by the Joint Committee of legislators. Nevertheless, a declaration made by the latter can be subsequently terminated by the legislature. See German Basic Law, art 53(a), 115(2) & 115l. Executive measures exercised in connection to the state of emergency must be immediately referred to the Bundestag, Bundesrat and the Joint Committee (art 115f). Further, emergency regulations only apply for a limited period and are enforceable after a period of six months following the end of the emergency (art.115k). The Constitutional Council and legislative officials must continue to exercise their functions and the Bundestag must not be dissolved (arts 115 (g) & (h)).

<sup>205</sup> Constitution of South African, art 37(1).



three months at a time. Nevertheless such extensions must be arrived at in the first instance by a resolution adopted with a supporting majority vote and subsequently by a 60% vote of the majority of parliamentarians.<sup>206</sup> Further oversight is provided by the courts which have jurisdiction to rule on the validity of a declaration, its extension or any subsequent legislation or measures taken in pursuance of the declaration.<sup>207</sup> Again, any derogation from the Bill of Rights is only permissible to the extent that it is ‘strictly’ necessary and that it is not inconsistent with South Africa’s obligation under the international law applicable to states of emergency.<sup>208</sup>

In Cameroon, since the 1996 constitutional amendments, emergency powers have not been used. As opposed to the Ahidjo regime which thrived under a perpetual state of emergency, the Biya regime has declared a state of emergency twice only (in 1984 to deal with the *coup d’etat* and in 1992 following the declaration of results of the presidential election of that year).<sup>209</sup> The case of *Wakai v The People*<sup>210</sup> which originated from the 1992 declaration will be used to highlight some of the difficulties that the emergency regime can pose with respect to the exercise of CPR. Although it is pre-1996, as the analysis of the Constitution demonstrated earlier, the scope of presidential emergency powers has not been substantially altered from the position under the Unitary Constitution.

The prelude to *Wakai v The People* is that, in 1992 incumbent President Biya was proclaimed winner of the presidential election of that year amidst allegations of massive electoral irregularities. A series of demonstrations subsequently occurred in the Northwest Region, the political base of the main opposition party (SDF) which was alleged to have won the elections. Following the demonstrations, a state of emergency was declared by presidential decree and confined to that Region as required by section 2 of the Emergency Legislation. Pursuant to the Constitution, that declaration was made

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<sup>206</sup> *ibid* art 37(2).

<sup>207</sup> *ibid* art 37(3).

<sup>208</sup> *ibid* art 37(4).

<sup>209</sup> Fombad, ‘Cameroon’s Emergency Powers’ (n 191).

<sup>210</sup> *Wakai & 172 Others v The People*, 1997, 1CCLR, 127.

without the involvement of any other institution neither was there any apparent criteria to determine if the circumstances warranted such a declaration.

Nevertheless, the applicants (mostly close supporters of the defeated opposition leader) were arrested under arbitrary circumstances. Some were arrested at night, others without warrants (although warrants were later issued by the respective administrative authorities and backdated to validate the arrests).<sup>211</sup> Again, some were arrested pursuant to banditry laws which had no relevance to the state of emergency and yet others were arrested in different jurisdictions and brought to the Northwest Region to be made subject to the emergency law. To further demonstrate contempt for the rule of law, the applicants were confined in a detention centre notorious for torture<sup>212</sup> and some were detained for longer than the four month limit imposed by the emergency legislation.

The applicants applied for bail in the Mezam High Court, pending any charges that might have been preferred against them. The respondents argued that the administrative authorities had exercised their administrative powers under the emergency legislation as a result of which the Mezam High Court lacked jurisdiction to entertain an application for bail. In the respondents' view, having exercised their administrative powers, the court with jurisdiction to entertain any matter arising from the detention was the Administrative Bench of the Supreme Court.<sup>213</sup> The applicants however relying on the principle of *voies de faits*<sup>214</sup> challenged the administrative character of the acts, as they had been marred by gross irregularities. The Court affirmed that the emergency law did not oust its jurisdiction to deal with gross violation of CPR. It considered the circumstances of the

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<sup>211</sup> One of the detainees was reported to have been tortured to death, while the warrant for his arrest was dated after his burial. See *Wakai* (n 210)135. See also Fombad, 'Cameroon's Emergency Powers' (n 191) 74.

<sup>212</sup> *Wakai* (n 210) 141.

<sup>213</sup> As is the position in France, the administrative justice system in Cameroon makes a distinction between ordinary courts which adjudicate disputes between citizens and administrative courts which adjudicate disputes involving administrative authorities. Thus, a dispute involving an administrative authority in Cameroon will be adjudicated in the administrative courts. However, under the doctrine of *voies de faits* where the acts of an administrative authority are so irregular that they can no longer be attributed to the state, the administrator would be considered to have acted in his personal capacity. In which case, he could be tried in the ordinary courts. This point is discussed further in ch 5.

<sup>214</sup> *ibid.*

arrests and detentions arbitrary and ordered the release of the applicants.<sup>215</sup> Nevertheless, the applicants were not released. The government instead transferred them to Yaoundé, the capital city of Cameroon.<sup>216</sup>

The case highlights a number of issues. Firstly, as per the Constitution, the declaration was made without consulting any other institutions. There were no objective means of determining if the circumstances constituted a threat to the nation or its institutions. Rather, it appeared as an attempt by the President to legitimate the regime by suppressing protests against the allegedly rigged elections. Secondly, administrative authorities were able to make use of their wide powers to perpetrate massive violations in an attempt to further the President's ambition of suppressing political opposition. Thirdly, the Court had no jurisdiction in constitutional review. It stated that, it had no jurisdiction to review the legality of legislative or regulatory instruments taken under the emergency regime.<sup>217</sup> Although the Court took a decisive stance against arbitrary executive conduct, its ability to actually ensure the release of the applicants was undermined by the judiciary's lack of capacity to enforce judgments against the executive.<sup>218</sup>

Although emergency powers have not been used under the 1996 Constitution, the regime is structured in such a way that it appears to be the proverbial 'loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need'.<sup>219</sup>

### **3. PRESIDENTIAL POWERS AND ACCOUNTABILITY**

The foregoing sections have discussed the array of powers vested in the President of Cameroon. Because those powers are broad, there is need for a robust system of checks and balances to enhance their effective exercise and pre-empt possible abuse. However, as seen above Parliament is not in a position to exercise the requisite oversight. The

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<sup>215</sup> *Wakai* (n 210) 141

<sup>216</sup> That point is explored further in ch 4, in the context of the problem of absence of judicial power, which facilitates executive disregard for court orders.

<sup>217</sup> *Wakai* (n 210) 140.

<sup>218</sup> Fombad, 'Cameroon's Emergency Powers' (n 191) 79.

<sup>219</sup> Gross (n 170) 348.

framework for checks and balances is further enfeebled by provisions on immunity and impeachment. These are considered below.

### 3.1. Immunity from Prosecution

Immunity from prosecution is an important principle of public law and may be supported by the supposition that it can promote the consistent functioning of public power and continuity of the state. It is supposedly for the benefit of the public that immunity is granted to public officials such as presidents to enable the discharge of their duties without unnecessary distractions or impediments emanating from law suits. While that may be the case, there is also the necessity to consider presidential accountability. Presidential immunity provisions are a common feature in various regime types, be they presidential or semi-presidential<sup>220</sup> and even in parliamentary systems some senior executive officials and parliamentarians enjoy a certain level of immunity. Yet, it should not be the case that immunity provisions are drafted to ensure absolute immunity from prosecution. That does not augur well for accountability and indeed goes against a basic tenet of the rule of law – that no one is above the law.<sup>221</sup>

In Cameroon, prior to 2008 there was no constitutional provision ostensibly dealing with presidential immunity. Therefore, in *theory* it may have been possible for prosecution to be initiated in domestic courts for gross violations of CPR. That position was altered in 2008 following a constitutional amendment.<sup>222</sup> Article 53(3) of the Constitution provides that:

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<sup>220</sup> See for instance, French Constitution, art 68; Nigerian Constitution, s 308; Zambian Constitution, art 43(3); Namibian Constitution, art 31(3); Constitution of Pakistan; s 248(2).

<sup>221</sup> In advanced democracies, it is repeatedly emphasized that none, including executive officials, is above the law. For instance in *Hamdan v. Rumsfeld*, 126 S. Ct 2749, 2798 (2006) the U.S. Supreme Court emphasised that the executive is bound to act in accordance with the law. See also *M v. Home Office & another* [1994] 1AC377. That recognition is not exclusive to advanced democracies as exemplified by Zambia where parliament has the discretion to lift presidential immunity (Zambian Const. art. 43(3). This was confirmed in *Chiluba v Attorney General*, 2003 [ZMSC] 4, where the Court held that parliament acted legally in lifting former President Chiluba's immunity.

<sup>222</sup> Law No. 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No. 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972.

Acts committed by the President of the Republic in pursuance of Articles 5, 8, 9 and 10 above shall be covered by immunity and he shall not be accountable for them after the exercise of his functions.<sup>223</sup>

There are at least two major aspects of this provision which can be deemed inconsistent with the need for accountability.

First, there is uncertainty as to the scope of the President's immunity. The provision simply states that the relevant acts are covered by immunity. It is not clear that these acts are limited to criminal or civil or both. Given that the amendment followed a string of amendments that had the effect of further consolidating the presidency of the incumbent,<sup>224</sup> the inference can be made that article 53(3) intended to cover both civil and criminal acts in which the President may be implicated in pursuance of his constitutional functions. So, he cannot be held accountable in any domestic court for acts which result in the violation of CPR.

Secondly, presidential immunity covers the period after the expiration of his term of office. This is a case of absolute immunity which has the potential to turn an already authoritarian regime into outright dictatorship. In the absence of any form of accountability during and after the expiration of his term, the President is left with free reign to use his powers excessively.

The Cameroonian position seems to reflect that of France where traditionally the head of state is reputed to be inviolable.<sup>225</sup> Yet in France, the President can be prosecuted after

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<sup>223</sup> Presidential powers and duties under articles 8, 9 & 10 are those dealt with in the preceding sections. Other powers not discussed in this chapter include, art 8(4) accrediting ambassadors and envoys to foreign powers; art 8(6) referring matters to the Constitutional Council; art 8(7) exercising the right of clemency after consultation with the Higher Judicial Council.

<sup>224</sup> Presidential term limits were also eliminated and a new impeachment regime instituted (discussed below).

<sup>225</sup> Marcel Monin, *Textes et Documents Constitutionnels depuis 1958: Analyse et Commentaires* (Armand Colin 2001)328.

the expiration of his tenure.<sup>226</sup> That position has been reaffirmed by the *Conseil Constitutionnel*<sup>227</sup> and the *Cour de Cassation*<sup>228</sup> respectively which ruled that a serving president could not (except for high treason) be charged, prosecuted or forced to testify in court proceedings for the duration of his term. But that it did not preclude any criminal proceedings against him once his term expired.<sup>229</sup>

In the African context, as is the case in Cameroon, presidential immunity appears to be gaining prominence as an inducement for long term presidents to relinquish power.<sup>230</sup> Some members of the parliamentary opposition in Cameroon seemed to have been influenced by that argument and did not object to the government's proposal to introduce an immunity clause in the Constitution on that basis.<sup>231</sup> They, however, acknowledged that immunity functions well in a situation of checks and balances and therefore did not constitute a recipe for constitutional dictatorship.<sup>232</sup> That latter point is disputable with regards to Cameroon in the context of a powerful President operating within a framework devoid of adequate checks and balances. Had those members of the opposition considered broader political implications beyond the interest of inducing the President to step down, it might have been clearer that an immunity clause further empowers the President and may provide comparably little incentive to step down. In relation to the immunity debate, it may be that there was less concern with accountability as the President can be made accountable through an impeachment process. Yet, as demonstrated below that too, leaves a lot to be desired.

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<sup>226</sup> French Constitution, art 68. Favoreu however stated in passing that temporary immunity accords well with the principle of separation of powers although he fails to elucidate on the point. See Favoreu, Scaffoni, et al, *Droits Constitutionnel*(Éditions Dalloz 2008)660.

<sup>227</sup> In Décision No. 98-408 DC of 22 January 1999, Cour Pénal International.

<sup>228</sup> Arrêt du Octobre 2001 (Assemblée plénière, Breisacher).

<sup>229</sup> Favoreu, Scaffoni, et al (n 226) 660-662.

<sup>230</sup> Charles Fombad & Nat Inegbedion, 'Presidential Term Limits and their Impact on Constitutionalism in Africa' in Fombad & Christina Murray (eds) *Fostering Constitutionalism in Africa* (Pretoria University Law Press 2010) 23-24. Tom Ginsburg et al have inferred that granting immunity from prosecution may be an incentive to persuade 'overstayers' to quit but also note the potential controversy with issues of accountability. Ginsburg, Melton & Elkins, 'On the Evasion of Executive Term Limits' (2011) 52 *William and Mary Law Review* 1807, 1865.

<sup>231</sup> That was the explanation proffered by Adamu Mbah Ndam of the SDF who introduced the oppositions counter proposals. See Report N° 007/AN/8 on Bill N° 819/PJL/AN (March 2008); Kini Nsom, 'SDF Backs Biya's Presidential Immunity' (Buea, 11 April 2008) <[www.postnewslines.com/2008/04/sdf-backs-biyas.html#tp](http://www.postnewslines.com/2008/04/sdf-backs-biyas.html#tp)> accessed 15 May 2012.

<sup>232</sup> *ibid.*

### 3.2. Impeachment

Impeachment can provide a useful means of enforcing accountability, if well conceived. Its very existence and the probability of its use can act as a source of pressure to induce a president to respect the rule of law. In Cameroon, it is doubtful that the impeachment procedure can be considered an effective system of accountability.

The current provision on impeachment is an amended version of article 53 (amended in 2008) which vested the Court of Impeachment with jurisdiction to try the President for High Treason. It provided further that the organisation, composition, conditions of reference and the applicable procedure before that Court shall be laid down by a subsequent legislation. That legislation is still being awaited. However, the 2008 constitutional amendments shed further (albeit restricted) light on the impeachment procedure. The new article 53 provides that:

The Court of Impeachment shall have jurisdiction, in respect of acts committed in the exercise of their functions to try:

-The President of the Republic for high treason; ...<sup>233</sup>

The President of the Republic shall be indicted only by the National Assembly and the Senate deciding through an identical vote by open ballot and by a four fifth majority of their members.<sup>234</sup>

In terms of what constitutes high treason, the Constitution is silent and there is no case law illuminating that point given that that procedure has never been invoked. Thus, attempting to infer what high treason constitutes is a matter of speculation. However, the silence provides the basis to adopt a wide or narrow interpretation, depending on whichever best exculpates the President at the material moment. Although it might be unrealistic to require an exhaustive list of circumstances, it is important that as a

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<sup>233</sup> Constitution of Cameroon, art 53(1).

<sup>234</sup> *ibid* art 53(2).

mechanism for accountability, particularly of a President who exercises such broad powers, there should be some carefully defined guidelines.<sup>235</sup> Granted, in some systems impeachment provisions are similarly vague,<sup>236</sup> while others attempt to provide what might be considered starting points.<sup>237</sup> However, that does not imply that they are commendable or sufficient. Lack of clarity can provide scope for subjective interpretations to enhance the personal objectives of the interpreters.<sup>238</sup>

Further, with respect to Cameroon, the procedure contemplated by subsection (2) renders impeachment practically a nullity. Firstly, the President can only be indicted by Parliament consisting of the National Assembly and Senate. In the absence of the Senate, that responsibility rests solely with the National Assembly. That in itself is not an obstacle. What is more problematic though is the extraordinary majority that is required to get the process started. A successful vote requires a four fifth majority which is unlikely to be achieved under the current dynamics in Parliament. If the entire opposition were to form a united front they will hardly obtain a fraction of the required majority. Any effort to succeed at initiating the impeachment process will depend largely on the cooperation of members of the ruling party who are unlikely to assist in bringing down a regime from which they benefit. The parliamentary opposition unsuccessfully objected to that amendment when the bill was presented in Parliament.<sup>239</sup> They were of the view that it amounted to a requirement for unanimity which can never be achieved under the

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<sup>235</sup> John Hatchard argues with respect to the African context that it is important that there are carefully defined standards. See John Hatchard, 'Presidential Removal: Unzipping the Constitutional Provisions' (2000) 44(1) *Journal of African Law* 1, 2-3.

<sup>236</sup> The Nigerian Constitution, s 143(1) uses the term, 'gross misconduct'. The Constitution of South Africa, s 89(1) uses vague standards such as (a) serious violations of the constitution or law, (b) serious misconduct, (c) inability to perform the functions of office.

<sup>237</sup> The U.S. Constitution art. II, s 4 for instance, provides for treason, bribery and other high crimes and misdemeanours. Although some conducts can be determined through criminal law classification of offences, yet the constitutional provisions are broad. See Michael Gerhardt, 'The Special Constitutional Structure of the Federal Impeachment Process' (2000) 6(1&2) *Law and Contemporary Problems* 245, 247. Cf Cass Sunstein who argues that they are highly suggestive. Sunstein, 'Impeaching the President' (1998) 147(2) *University of Pennsylvania Law Review* 279.

<sup>238</sup> Richard Posner, *An Affair of State: The Investigation, Impeachment, and Trial of President Clinton* (Harvard University Press 1999) 174, 111-113. See also Gerhardt (n 237) 247.

<sup>239</sup> SDF Proposed Amendment to Bill N° 819/PLJ/AN, N° 06 (on art 53(2)).



circumstances in Parliament and therefore stifled any possibility of ever impeaching the President.<sup>240</sup>

Moreover, the votes are required to be in open ballot implying that there is no confidentiality. For such an extreme mechanism which can precipitate regime change, dispensing with confidentiality potentially compromises the process as parliamentarians particularly from the ruling party are likely to be reluctant to expose themselves as the ‘renegades’ of their party. Given the patronage networks that exist within these institutions, concurring to a motion to impeach the President can expose a parliamentarian to possible loss of favours from the system and even more drastic consequences.<sup>241</sup> The requirement of ‘transparency’ in the voting system is perhaps deliberate and intended to compromise the impeachment process by deterring any prospective vote in favour of the President’s impeachment. The opposition specifically requested an amendment to the government bill with respect to the open ballot, to be replaced with secret ballots. They argued that:

The impeachment of the President of the Republic is a serious matter and must not be left to be influenced by the fact that the vote is open as to enable some of the voters to be influenced or intimidated by the voting pattern of some other voters and thus cause them not to vote according to their conscience.<sup>242</sup>

The inadequacy of the impeachment system is compounded by the fact that the Court of Impeachment is yet to be established since it first appeared in the 1972 Constitution and was re-enacted in the 1996 Constitution. Article 53(4) states that the organisation, composition and the conditions under which matters shall be referred to, as well as the procedure applicable before the Court shall be laid down by law. When this law will be enacted, is a matter of speculation.<sup>243</sup> There is a distinct possibility that failure to ensure

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<sup>240</sup> *ibid.*

<sup>241</sup> Cf (n 54 ) above in the case of the victimisation of Paul Ayah MP.

<sup>242</sup> SDF Proposed Amendment to Bill N° 819/PLJ/AN, N° 06 (on art 53(2)).

<sup>243</sup> Given that the majority of laws that have been enacted have originated from the President, it is unrealistic to expect that a bill for the establishment of that Court would be proposed in the near future.

the creation of that Court or the temporary delegation of its jurisdiction is deliberate. This assertion is reinforced by the fact that the jurisdiction of other institutions such as the Constitutional Council (which is yet to be created) is temporarily exercised by the Supreme Court.

## **CONCLUSION**

This chapter has discussed the scope of presidential power in Cameroon, and associated accountability measures under the 1996 Constitution. It has demonstrated that, the arrangements have continued to be influenced by the French colonial heritage, introduced in the previous constitutions. Despite being based on a separation of powers model which is deemed to provide an additional separation of executive powers and potentially more accountability, the current system has developed a more potent variant which obscures any benefits that can accrue to that system. Thus, presidential power continues to be excessive, reinforced by a feeble accountability framework. As such, the President is in a position to unilaterally control executive authorities, security forces and the legislature, undermining their ability to contribute positively to the realisation of CPR. Although some of the powers have not been used, their mere availability is menacing to other institutions which would otherwise provide oversight on the President.

Moreover, as a fragile democracy, with feeble or inexistent vertical accountability mechanisms, there are no alternative avenues for presidential accountability. As the next chapter shall demonstrate, the situation is further compounded by extensive presidential control of the judiciary, a position which undermines judicial independence.

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Moreover, in the event that the law is enacted, there is reason to suspect that, like the other institutions examined in this study, the Court will be a 'paper tiger'.

## **Chapter 4**

### **Judicial Independence in Cameroon**

#### **INTRODUCTION**

This chapter examines the subject of judicial independence in Cameroon, against the backdrop of the framework of constitutionalism presented in Chapter 1. As was discussed there, an independent judiciary is an important part of the system of checks and balances, providing scope for the judiciary to exercise oversight on the other institutions of government.<sup>1</sup> The courts can provide an ‘indispensable link in the machinery’<sup>2</sup> for protection against states’ violation of CPR.

As briefly discussed in Chapter 2, the civil law model that was transplanted to Cameroon at independence was oriented towards executive control over the judiciary. The current 1996 Constitution purports to alter that position by introducing a system of equitable balance and separation of powers through which presumably the judiciary would be accorded greater scope to exercise its constitutionally guaranteed independence. Its status was augmented from that of an ‘authority’ to a ‘power’ as is the case with other governmental powers. However, as will be demonstrated, its institutional structure and the conditions for securing judicial independence under that Constitution continue to be influenced by the inherited model. As such, judicial independence has continued to be undermined. A consequence that has ensued is the inability of the judiciary to effectively secure the protection of CPR.

To develop the above assertions, this chapter is divided into four major sections. The first section builds on the principle of judicial independence which was briefly stated in Chapter 1. The second section provides a brief structural framework of the judiciary in Cameroon. This is considered important because the judiciary is characterised by a

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<sup>1</sup> See ch 1, s 3.2 at 42-46.

<sup>2</sup> Linda Keith Camp, ‘Judicial Independence and Human Rights Protection around the World’ (2002) 85(4) *Judicature* 195.

complex structure with features which may be unfamiliar particularly to a non-civil law reader. That section further discusses the constitutional status of the judiciary, to provide the background for understanding the problem of lack of judicial independence in Cameroon. In Section three, the conditions for securing individual and institutional independence of the judiciary are discussed. Section four examines the mechanisms for judicial accountability and how they affect judicial independence. The chapter concludes with a summation of the discussions in the previous sections.

## 1. REVISITING THE CONCEPT OF JUDICIAL INDEPENDENCE

Judicial independence is a concept which evades a consensual definition. As asserted by Diana Woodhouse, it has been subjected to ‘vagaries of interpretation and usage’.<sup>3</sup> Building on the principle as briefly stated in Chapter 1, three related analytical dimensions may be distinguished. Firstly, autonomy and power; secondly, individual and institutional independence and thirdly, accountability.

Autonomy and power are important for the judiciary in its role of limiting governmental power. Autonomy implies freedom from undue interference, particularly interference by the executive which is usually party to disputes concerning CPR violations.<sup>4</sup> It is an important dimension as it provides scope for the courts to adjudicate such disputes fairly and impartially without being under constraint to unduly favour the executive. Power complements that by enhancing the enforceability of decisions. Autonomy and power combine to promote an independent judiciary with the capacity of subjecting the executive to the rule of law.

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<sup>3</sup> Diana Woodhouse, ‘Judicial Independence and Accountability’ in Andenas and Fairgrieve (eds), *Judicial Independence and Accountability* (British Institute of International and Comparative Law 2006) 122. See in the same volume, Andenas and Fairgrieve, ‘Judicial Independence and Accountability’ 23. See also Peter Russell & David O’Brien, *Judicial Independence in the Age of Democracy: Critical Perspectives from around the World* (University of Virginia Press 2001); Stephen Burbank and Barry Friedman, ‘Reconsidering Judicial Independence’ in Burbank & Friedman (eds), *Judicial Independence at the Crossroads: An Interdisciplinary Approach* (Sage Publications 2002) 10-11.

<sup>4</sup> Christopher Larkins, ‘Judicial Independence: A Theoretical and Conceptual Analysis’ (1996) 44(4) *American Journal of Comparative Law* 605, 608.

Judicial independence should operate both at the individual and institutional level. The former refers to a judge's autonomy from undue external influence (from the political branches as already mentioned) and internal pressures such as control from higher court judges or other hierarchical structures. Control from higher court judges by way of appellate review is not *prima facie* at variance with individual independence.<sup>5</sup> However, independence may be compromised in circumstances where lower court judges may be inclined to, or feel compelled to reflect the wishes of senior judges particularly where internal administrative hierarchies make their career progression dependent on senior judges. Moreover, other hierarchical structures may be designed in ways that vest the control of the judicial tenure on executive officials who can use that position to influence a judge's decisional independence.

To promote individual independence, a number of conditions or structural mechanisms are desirable. As discussed in Chapter 1 these include the method of appointment, securing the judicial tenure, promotion, transfers, discipline and remuneration.<sup>6</sup> The guiding criteria for regulating generally the judicial tenure are objectivity and transparency. The method of appointing judges contributes to how judges may perceive their loyalties. Any appointment process should ideally be transparent and objective and based on such aspects as the integrity, ability and experience of individual candidates.<sup>7</sup> Similarly, the judicial tenure can be enhanced by objective and transparent criteria for promotions and transfers. Security of tenure is also an important determinant of a judge's ability to exercise autonomy. In the absence of a secured tenure, judges may be

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<sup>5</sup> Owen Fiss, 'The Limits of Judicial Independence' (1993) 25 *University of Miami Inter-American Law Review* 57, 58.

<sup>6</sup> A number of regional and international institutions have developed a variety of basic standards and guidelines on institutional features which promote or enhance judicial independence. Without attempting to be exhaustive, some examples include, The Latimer House Guidelines (2003); Bangalore Principles of Judicial Conduct (2002); European Charter on the Status of Judges (1998); African Commission's Recommendations on the Respect and Strengthening of the Independence of the Judiciary (1996) (hereafter African Commission's Rec); U.N. Basic Principles on the Independence of the Judiciary (1985) (hereafter UN Basic Principles); Montreal Declaration (1983), International Bar Association Minimum Standards of Judicial Independence (1982) and The Syracuse Principles (1981). Some of these would be referred to in this chapter.

<sup>7</sup> African Commission's Rec, 4(h) (i), (m) &(o) and UN Basic Principles, 10 & 13.

predisposed to submit to pressures emanating from external sources. This can be enhanced through guarantees of a mandatory retirement age secured by law.<sup>8</sup>

With regards to removal and discipline the same objective and transparent criteria should be employed based on gross misconduct, incompatibility with office or physical and mental incapacity which prevent judges from undertaking their duties.<sup>9</sup> Further, disciplinary procedures should guarantee a fair hearing and decisions in that respect should be subject to independent review.<sup>10</sup> Individual independence can also be compromised where judges are not financially secured, as insecurity can throw judges open to corruption.<sup>11</sup> More particularly with regard to executive influence, where remuneration is not guaranteed by law and protected against diminution, it may similarly lead to financial insecurity.<sup>12</sup> There is however a caveat to diminution of salaries which is that it may be acceptable where it is done as part of a broader economic measure which affects all public services.<sup>13</sup> The rationale for stringent measures to secure financial autonomy is to ensure that judicial salaries are not altered as a means of exerting influence on the judges or as a punitive measure.<sup>14</sup>

At the institutional level, independence requires that the judiciary as a collective has a secured source of funding, is adequately funded, free from interference from the executive in terms of its administration, and has the power to secure the enforcement of its decisions. Institutional independence has an important correlation with individual independence.<sup>15</sup> Judges need to be able to exercise their independence within a broader

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<sup>8</sup> African Commission's Rec, 4 (i) & (m) and UN Basic Principles, 11 & 12

<sup>9</sup> African Commission's Rec, 4 (p) and UN Basic Principles, 18.

<sup>10</sup> African Commission's Rec, 4 (q) & (r) and UN Basic Principles, 17, 19 & 20.

<sup>11</sup> Fiss (n 5) 63.

<sup>12</sup> *ibid*

<sup>13</sup> See for instance IBA Standards, s 15(b) and the Montreal Declaration, s 2.2(6). See also Shimon Shetreet, 'Judicial Independence: New Conceptual Dimensions and Contemporary Challenges' in Shetreet and Deschênes (eds), *Judicial Independence: The Contemporary Debate* (Martinus Nijhoff 1985) 622-623; Charles Fombad, 'A Preliminary Assessment of the Prospects for Judicial Independence in Post-1990 African Constitutions' (2007) *Public Law* 233, 249.

<sup>14</sup> In Swaziland where the executive is responsible for budgetary allocations to the judiciary, it has been used to exert pressure on the judiciary. See Fombad, 'A Preliminary Assessment' (n 13) 245.

<sup>15</sup> Lord Phillips P, 'Judicial Independence and Accountability: A View from the Supreme Court' (UCL Constitution Unit, launch of research project on *The Politics of Judicial Independence*, London, 8 February 2011) <[www.supremecourt.gov.uk/docs/speech\\_110208.pdf](http://www.supremecourt.gov.uk/docs/speech_110208.pdf)> accessed 30 March 2011.

context of an independent judiciary.<sup>16</sup> Individual judges are unlikely to have the capacity to exercise independence where the institution as a whole lacks that quality.

Given that financial allocations usually involve the political branches, it is also clearly desirable that that position is not used to influence the judiciary. The judiciary should have an autonomous judicial budget as that allows scope for it to function without the external threat of alteration of its financial status. This implies, at least, that the judiciary's budget is secured by charging it to a consolidated fund or determined as a fixed percentage of the state's budget.<sup>17</sup> In addition, funds should be sufficient to meet daily running costs.

There are a number of approaches to securing financial autonomy while also ensuring that the judiciary is provided with adequate funds. Some approaches favour exclusive judicial responsibility in the preparation of the judicial budget<sup>18</sup> while others lean towards increased judicial participation in conjunction with either the executive or parliament.<sup>19</sup> Although there may not be an ideal approach, the importance is to ensure that funding is adequate and the judiciary is not dependent either on the goodwill of the executive or the legislature.

In addition to financial autonomy, institutional independence also requires that the executive refrain from controlling the administration of the courts.<sup>20</sup> So, for instance, case assignment is considered an internal matter which should be dealt with by the courts.<sup>21</sup> However, executive supervision of some administrative processes of the courts is not inherently inconsistent with judicial independence as the government is generally responsible for the effective provision of public services in the country.<sup>22</sup> This is perhaps

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<sup>16</sup> Larkins (n 4) 611.

<sup>17</sup> Keith Rosenn, 'The Protection of Judicial Independence in Latin America' (1987) 19 *University of Miami Inter-American Law Review* 1, 16-17.

<sup>18</sup> In the Democratic Republic of Congo the judicial budget which was formally under the control of the executive is now under the control of the Congolese *Conseil Supérieur de la Magistrature* (CSM). See Law No. 08/013 of 2008 on the Congolese CSM, art 37(1) and Constitution of the DRC 2006, art 149(6).

<sup>19</sup> Constitution of Botswana, s 122; Constitution of Ghana, s 127(5).

<sup>20</sup> Shetreet (n 13) 650.

<sup>21</sup> UN Basic Principle 14.

<sup>22</sup> Shetreet (n 13) 650-651.

a necessary interface between the two branches and resonates with the empowering role of constitutionalism. If the judiciary is expected to safeguard CPR, it should be provided with the basic administrative requirements that can enhance its functioning. Nevertheless, executive control is only legitimate to the extent that it enhances the administrative performance of the courts in order to allow other judicial processes to be effectively carried out.

In terms of judicial power, although the courts may be able to make independent decisions, enforceability lies beyond their powers. In accordance with the strict separation of powers principle, enforceability of court orders is the responsibility of the executive. So, the courts rely on executive officials to execute or comply with their decisions.<sup>23</sup> This position limits the extent to which individual independence may positively influence the protection of CPR if executive officials cannot be compelled to comply with a court order. Reverting to the empowerment perspective of constitutionalism,<sup>24</sup> the judiciary should have both the capacity for independent judgment and the authority to limit governmental action through the enforceability of its decisions. Judicial power can be enhanced by endowing the courts with additional clout to deal assertively with contempt of court by executive authorities. Alternatively, or in addition, judicial power can be enhanced through vesting the courts with some responsibility over enforcement to be exercised in conjunction with the executive. This is not per se inconsistent with the principle of separation of powers as the latter allows for some shared responsibility where necessary to enhance effectiveness or to reduce the incidence of usurpation of powers.

The idealistic expectation is that properly conceived, the measures for securing independence can preserve the requisite level of autonomy of the judiciary to secure individual as well as institutional independence.<sup>25</sup> Independence is not always possible to determine as institutional guarantees may exist but in practice judges are unable to

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<sup>23</sup> Fiss (n 5) 64.

<sup>24</sup> See chap 1, s 1 at 24-25.

<sup>25</sup> John Ferejohn & Larry Kramer, 'Independent Judge, Dependent Judiciary: Institutionalising Judicial Restraint' (2002) 77 *New York University Law Review* 962, 967-968.



exercise independence. According to Christopher Larkins, where the scope of the courts' authority is so circumscribed that judges cannot reach decisions without the fear of jeopardising their career, their independence may be said to be compromised.<sup>26</sup> Similarly, where the scope of the judiciary to function effectively is limited due to its reliance on external sources for funding and other administrative matters it is lacking in independence.

Independence is, however, not an absolute value. While judges should enjoy a degree of insularity, it is also desirable that some degree of accountability exists to prevent the abuse of judicial authority.<sup>27</sup> So, it is in line with the purport of checks and balances that appellate review of decisions is carried out by superior courts.<sup>28</sup> Moreover, judges can be submitted to disciplinary measures for professional misconduct particularly where that may undermine, or appear to undermine their independence.<sup>29</sup> However, individual independence is potentially threatened where judges can be made subject to disciplinary measures for decisions in particular cases. Anticipation of a disciplinary measure from the institution responsible for accountability, for deciding a case against the latter's interest may inhibit individual independence. For accountability to complement independence, accountability mechanisms should be transparent, and guided by fair and objective criteria. Similarly, the personnel or institutions responsible for accountability should be vested with the relevant powers, be independent and have no personal interests in undermining or enhancing the autonomy of judges. The objective of accountability should be to enhance the judges' ability to promote the values that, as discussed above, judicial independence is said to promote.

As discussed earlier, given that the relationship between independence and accountability may be potentially tenuous, achieving the right balance is often problematic.<sup>30</sup> To ensure that both concepts can be complementary to enhance the enforcement of CPR,

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<sup>26</sup> Larkins (n 4) 613. See also Charles Geyh, 'Rescuing Judicial Accountability from the Realm of Political Rhetoric' (2006) 56(4) *Case Western Law Review* 911, 916.

<sup>27</sup> Fiss (n 5) 66.

<sup>28</sup> *ibid* 58.

<sup>29</sup> Geyh (n 26) 919-920.

<sup>30</sup> See ch 1, s 3.2.1 at 45-46.

accountability should not entail undue subjugation to external parties.<sup>31</sup> The potential of accountability encroaching on judicial independence is translated into concrete manifestations when the mechanisms designed to secure independence are conceived in ways that render the judiciary excessively accountable to the same institution that guarantees independence. A possible scenario obtains in terms of political accountability by virtue of which judges are accountable to the executive for such aspects as tenure, terms and conditions of service. As Nuno Garoupa and Tom Ginsburg note, judges who are accountable to the same institution that appoints them and determines the subsequent path of their career cannot be reasonably relied upon for independent and impartial decision making.<sup>32</sup> Independence can be further undermined in the absence of objective or transparent mechanisms by which judges can be held accountable. Although political accountability may involve some aspects of legal accountability (such as the provision of sanctions for conduct specifically outlined as being subject to disciplinary procedures) the political character of such systems undermines the transparency and objectivity that inheres in legal accountability measures.

With the conceptual analysis and conditions for judicial independence conceived as above, the position in Cameroon is now examined.

## **2. THE JUDICIAL STRUCTURE AND THE CONSTITUTIONAL STATUS OF THE JUDICIARY IN CAMEROON**

The constitution as discussed in Chapter 1, is the document that embodies the institutionalisation of the basic tenets of constitutionalism. It should establish governmental institutions and confer powers on them taking into account the context in which the constitution is to operate. The Cameroonian Constitution should therefore set the tone for the legal framework for judicial independence.

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<sup>31</sup> Stephen Burbank, 'Judicial Independence, Judicial Accountability and Inter-branch Relations' (2007) 95 *The Georgetown Law Journal* 909, 913.

<sup>32</sup> Nuno Garoupa & Tom Ginsburg, 'Guarding the Guardians: Judicial Councils and Judicial Independence' (2009) 57(1) *American Journal of Comparative Law* 201, 202. See also Lovemore Madhuku, 'Constitutional Protection of the Independence of the Judiciary: A Survey of the Position in Southern Africa' (2002) 46(2) *Journal of African Law* 232, 234.

This subsection will discuss the judicial structure and the constitutional status of the judiciary in Cameroon.

## 2.1. The Judicial Structure

There are two main categories of judicial authorities in Cameroon - judges 'of the bench'<sup>33</sup> and prosecutors.<sup>34</sup> Generally judges of the bench provide the conventional function of presiding over cases. In addition, there is a *juge d'instruction* (a judge of the bench) responsible for conducting preliminary investigations in criminal matters.<sup>35</sup> While prosecutors all form part of what is called the Legal Department (LD). There is one LD attached to a Supreme Court, Appeal Court, High Court and Court of First Instance.<sup>36</sup> This department is also considered a department in the Ministry of Justice and facilitates the overseeing of the judiciary by the Ministry of Justice.<sup>37</sup> The LD is headed by the *Procureur Général* in the Supreme and Appeal Courts (Directly responsible to the Minister of Justice)<sup>38</sup> and a State Counsel in the lower courts (directly responsible to the *Procureur Général* of the Court of Appeal within its geographical jurisdiction).<sup>39</sup> Its role is to enforce laws, regulations and judgments and in criminal matters to investigate, issue warrants and carry out prosecution.<sup>40</sup>

The two categories of judicial personnel begin their career as magistrates and subsequently rise to the position of judges. They can serve either at the bench or the LD at various points in their career. This is based on the concept of *le magistrat polyvalent*

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<sup>33</sup> The French language version of the Constitution of Cameroon refers to *magistrat du siège* to distinguish from prosecutors (art 37(2)). This is the categorisation applied in the judiciary in France and the explanation of that distinction according to the French Ministry of Justice is that while judges 'of the bench' preside over cases, prosecutors otherwise known as '*magistrats debout*' (standing judges), who share the same status as judges 'stand' during judicial proceedings. See Ministère de la Justice (République Française), 'Les Magistrats' <[www.ado.justice.gouv.fr/php/page.php?ref=3a](http://www.ado.justice.gouv.fr/php/page.php?ref=3a)> accessed 16 August 2012.

<sup>34</sup> There are also personnel such as clerks, registrars, notaries, bailiffs and judicial police officers, known as auxiliaries of justice who assist in the entire administrative system.

<sup>35</sup> Criminal Procedure Code 2006 (hereafter CPC), art 142(3) and Judicial Organisation Ordinance 2006 (hereafter JOO), ss 14(1) (b) & 17(1) (b).

<sup>36</sup> JOO, ss 14(1) (c), 17(1) (c), 20(1) (b); Supreme Court Ordinance 2006, s 4(b); CPC, s 127.

<sup>37</sup> Decree No. 2005/122 of 15 April 2005 Organising the Ministry of Justice (Hereafter OMJ); arts 8 & 32(1) para 1

<sup>38</sup> JOO, s 30(1).

<sup>39</sup> JOO, s 30(2).

<sup>40</sup> JOO, s 29(1)(2).

(adopted from the French judiciary) which implies that judges of the bench or the LD may be able to prosecute, preside over cases and conduct preliminary investigations. As such, they can be appointed to serve interchangeably in these different functions and even to the Ministry of Justice.<sup>41</sup> Those arrangements as will be discussed below, are crucial to the problem of the absence of judicial independence.

Against the brief background of that structure, the constitutional status of the judiciary is now discussed.

## **2.2. Constitutional Status**

A root cause of the absence of judicial independence is associated with the constitutional status of the judiciary in relation to the other governmental powers. The judiciary occupies a subordinate position to the legislature and the executive. As discussed in Chapter 2, the Federal and Unitary Constitutions referred to the judiciary as an authority rather than a power, unlike the executive and the legislature. This followed the French model in which the judiciary is referred to as an authority.<sup>42</sup> However, the current 1996 Constitution of Cameroon purported to elevate the status of the judiciary from an authority to a power, partly as a measure to establish ‘the balance and separation of power’.<sup>43</sup> Article 37(2) of the Constitution further appears to enhance the position of the judiciary by providing that ‘The judicial power shall be independent of the executive and legislative powers’. That recognition is commendable particularly in view of the fact that the audacious statement appears neither in the Federal nor the Unitary Constitutions.

However, the actual transformation of that status is doubtful. This is partly evident in the provisions of article 37(3) which maintains the requirement that ‘The President of the Republic shall guarantee the independence of the judicial power’. Certainly, that in itself

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<sup>41</sup> Carlson Anyangwe, *The Magistracy and the Bar in Cameroon* (CEPER 1989) 41-42.

<sup>42</sup> French Constitution, art 64. See also John H. Merryman, ‘The French Deviation’ (1996) 44(1) *American Journal of Comparative Law* 109, 113.

<sup>43</sup> Augustin K. Kouomegni, ‘Minister of Communication’s Introductory Note to the 1996 Constitutional Amendment’ *Fundamental Legal Texts* (vol 1, National Printing Press 1996).

does not indicate a prima facie case of judicial subservience as it may be a positive duty imposed on the President to ensure that the necessary conditions exist for the judiciary to function independently. However, for that obligation to be meaningful, it should necessarily be backed by a mechanism to ensure that the President fulfils that obligation. Regrettably the Constitution is silent on that.<sup>44</sup>

Arguably, the 1996 constitution altered the normative reference of the judiciary from an authority to a power. However, substantively, the judiciary remained under the control of the executive. Maurice Kamto for one argues that if the change of judicial status was an attempt to introduce a system of balanced power, there is no justification (at least in the Cameroonian context) for making one power the guarantor of the independence of another power, without a reciprocal obligation.<sup>45</sup> A justification ‘may’ exist in France where this model developed in response to historical issues peculiar to the French judiciary.<sup>46</sup> According to Kamto, the Cameroonian case is different particularly because the judiciary does not have a history of obstructing government activities and public life as was the case with the judiciary in France under the *Ancien Regime*.<sup>47</sup> The adherence to a model that ensures the subjugation of the judiciary does not accord with the purported intention of enhancing the balance and separation of powers. Moreover, as demonstrated below, the conditions for securing judicial independence do not provide much scope for the exercise of actual judicial autonomy or power.

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<sup>44</sup> Const of Cameroon 1996, arts 37(3), 42.

<sup>45</sup> Maurice Kamto, ‘Les Mutations de la Justice Camerounaise à la Lumière des Développements Constitutionnels de 1996’ (2000) 1(1) *Reveu Africaine des Sciences Juridiques* 9, 15.

<sup>46</sup> Historically, the *parlements* (Royal Courts) which existed during the *Ancien Regime* (the regime prior to the 1789 French Revolution) acted as obstructive forces against monarchical administration. They sometimes interfered with royal edicts by providing interpretations which did not reflect the intended effect of the legislation, or by declaring royal edicts null and void and habitually abstained from registering royal decrees. Further, they issued decrees denouncing government programmes and policies and defied royal orders. After the French Revolution of 1789 which precipitated the fall of the *Ancien Regime*, successive republican governments (inspired by Montesquieu’s theory of separation of powers) severely curtailed judicial powers to ensure that the problems engendered by the *gouvernement des juges* that existed under the *Ancien Regime* were not replicated in the new dispensation. See Bailey Stone, *The French Parlements and the Crisis of the Old Regime* (University of North Carolina Press 1986) 3-15. See also Merryman, ‘The French Deviation’ (n 42) 113-117.

<sup>47</sup> Kamto (n 45)15. See note 46 above.

### 3. CONDITIONS FOR SECURING JUDICIAL INDEPENDENCE IN CAMEROON

This subsection examines the conditions adopted to secure judicial independence in Cameroon. Drawing from the discussion in Section 1 above, judicial independence will be discussed from the individual and institutional dimensions.

#### 3.1. Individual Independence

According to Shimon Shetreet individual independence is composed of two essential elements - substantive and personal independence.<sup>48</sup> The specific features that fall generally under the rubric of personal and substantive independence are somewhat interrelated warranting a less rigid classification of these elements. The approach adopted here reflects a more liberal adherence to these dichotomies where necessary to achieve clarity and coherence. In particular, examination of the mechanism for remuneration and the internal hierarchical control (which affects substantive independence) will be discussed under the institutional dimension. These two aspects cut across both the individual and institutional dimensions.

##### 3.1.1. *Substantive Independence*

The requirement that in discharging his duties, a judge is subject only to the law and his conscience is what is referred to as substantive independence.<sup>49</sup> This requirement is essential to enhance the impartiality of the judge and his freedom to act without pressures which might influence the course of his decision.

The Constitution of Cameroon recognises substantive independence. It provides that ‘Magistrates of the bench shall, in the discharge of their duties, be governed only by the

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<sup>48</sup> Shetreet (n 13) 598.

<sup>49</sup> *ibid* 630.

law and their conscience'.<sup>50</sup> With regards to the LD, prosecutors are not bound by that obligation given that their duty is *prima facie* prosecutorial. They are rather under the supervision of the Ministry of Justice.<sup>51</sup> This latter aspect will be explored further with regard to the way it impacts on judicial independence.

Substantive independence is an affirmation of a standard but not a sufficient guarantee of judicial independence. It can be complemented by mechanisms to ensure judicial autonomy. In Cameroon, with regards to the substantive independence of the judges of the bench, ordinary legislation as discussed below does not appear to provide adequate conditions to support the constitutional guarantee.

### ***3.1.2. Personal Independence***

Besides substantive independence, a judges' individual independence is also buttressed by the level of personal independence. The latter relates to the method of appointment, transfers, promotions, discipline<sup>52</sup> and remuneration. These aspects (with the exception of remuneration) are discussed below.

#### **a. APPOINTMENTS**

The Cameroonian judiciary is a career judiciary and the process of appointment is regulated primarily by the President and the Higher Judicial Council (hereafter HJC). The Constitution provides that judges of the bench and the LD shall be appointed by the President who shall be assisted in that capacity by the HJC.<sup>53</sup> It is not exactly clear if the inclusion of the HJC is a mechanism to diversify control of the judiciary in order to enhance the President's ability to guarantee judicial independence. The more probable position is that being modelled after the French judiciary under the Constitution of the Fifth Republic it was an inevitable pattern for Cameroon to follow as the French *Conseil*

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<sup>50</sup> Constitution of Cameroon, art 37(2). See also Decree N° 95/048 of 08 March 1995 on the Status of the Magistracy (SOM), art 5(1) as amended and art 23.

<sup>51</sup> CPC, ss 60, 128 & 133(2). See OMJ, arts 8, 32(1) para 1.

<sup>52</sup> Shetreet (n 13) 598

<sup>53</sup> Constitution of Cameroon, art 37(3).

*Supérieur de la Magistrature* (CSM) was vested with similar responsibilities.<sup>54</sup> The government of Cameroon has however described the HJC as part of the ‘balancing mechanism’.<sup>55</sup> According to the government, the HJC is composed of distinguished personalities and characterised by broad representation and balance, which it argued, are unique characteristic that provide the necessary balance to pre-empt exclusive executive control of the judiciary.<sup>56</sup> That position however is doubtful.<sup>57</sup>

The process of qualification for appointment as a judge begins with a competitive examination after acquiring a master’s degree in law or *maitrise en droit*.<sup>58</sup> Successful candidates are then admitted into the School of Administration and Magistracy (henceforth ENAM) in the Magistracy section to study for a two year period.<sup>59</sup> They are trained as judges without any distinction as to trial judges, prosecutors or investigating judges. At the end of the qualifying period they are appointed by presidential decree to serve either as judges on the bench, prosecutors, investigating judges or even to the Ministry of Justice.<sup>60</sup> Additionally, the eligibility criteria accommodates persons with adequate professional experience of a minimum of five years obtained in Cameroon in the field of economics, finance or law (for instance as lecturers, bailiffs, court registrars or notaries).<sup>61</sup>

The initial appointment process perhaps does not pose much of a challenge to independence given that the judiciary is career based. Moreover, once appointed, judges are guaranteed a measure of security of tenure. They are integrated into the civil service and enjoy a fixed tenure until retirement<sup>62</sup> although this does not preclude disciplinary

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<sup>54</sup> French Constitution, art 64.

<sup>55</sup> United Nations Human Rights Committee (HRC), ‘Consideration of Reports Submitted by States Parties under Article 40 of the Covenant on Civil and Political Rights: Fourth Periodic Report of Cameroon’ (19-20 July 2010) CCPR/C/CMR/Q/4/Add.1, p 62, para 176-177.

<sup>56</sup> *ibid* p 62, para 177.

<sup>57</sup> That will be discussed further below.

<sup>58</sup> SOM, art 11(1) & (2).

<sup>59</sup> SOM, art 11(1) (b).

<sup>60</sup> SOM, art 11 (1) (a) (b) as amended. See also SOM, art 6(1).

<sup>61</sup> SOM, art 11(3).

<sup>62</sup> Judges retire at various ages; 58 years for 1<sup>st</sup> and 2<sup>nd</sup> grade judges, 60 for 3<sup>rd</sup> grade judges and 65 for 4<sup>th</sup> grade, and judges ‘hors hiérarchie’. See SOM, art 71(2) as amended.



sanctions that may warrant dismissal.<sup>63</sup> However, the retirement age limitation may be dispensed with by presidential decree where the nature or peculiarity of certain functions warrants the extension of a judge's term of office.<sup>64</sup> The law does not provide any objective basis upon which such an extension would be applicable nor does it provide safeguards by way of legislative or other independent oversight in the exercise of that power. That creates room for arbitrariness. The power is also a potential instrument for the reward of conformist judges who lean on the side of the executive further compromising judicial independence.<sup>65</sup>

Although extension of a judge's retirement age is not uncommon, it should not be done in a way that allows scope for that power to be misused. The purpose should clearly be to facilitate the administration of justice. The Cameroonian approach can be contrasted with that of Botswana where the President is vested with a similar power. The Botswana President can extend the tenure of office of a high court judge for such period as may be necessary to enable him to deliver judgment or to discharge other duties in relation to proceedings that were commenced before him prior to the expiration of his term.<sup>66</sup> However, this is done in accordance with the advice of the Judicial Service Commission.<sup>67</sup>

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<sup>63</sup> For instance, the recent Decree No. 2012/208 of 23 April 2012 dismissing a judge of the Audit Bench of the Supreme Court for influence peddling and Fraud. See also *Mazou v Cameroon* (2001) AHRLR 42, (HRC 2000) where a judge who had been dismissed and imprisoned for complicity in the 1984 failed *Coup d'État* sought his reinstatement after serving his prison term; Alphonse Sinkam, 'Conseil Supérieur de la Magistrature est interpellé' *Journal L'Actu* (19 March 2012) <[www.journallactu.com/POLITIQUE/conseil-superieur-de-la-magistrature-lorganede-sanctions-des-magistrats-est-interpele.html](http://www.journallactu.com/POLITIQUE/conseil-superieur-de-la-magistrature-lorganede-sanctions-des-magistrats-est-interpele.html)> accessed 16 August 2012, on the dismissal of two senior judges for professional misconduct.

<sup>64</sup> SOM, art 71(4).

<sup>65</sup> This provision has been the basis for the almost infinite extension of the tenure of the First President of the Supreme Court who in 1992, after noting irregularities in the presidential election, declared the incumbent winner of the elections stating also that the Court could do nothing about the irregularities. See Charles Fombad, 'The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?' (1998) 42(2) *Journal of African Law* 172, 186.

<sup>66</sup> Constitution of Botswana, s 96(4).

<sup>67</sup> Constitution of Botswana, s 96(4). The Ghanaian Constitution goes even further by laying a more prescriptive time limit for a permissible extension (a maximum of six months for both judges of lower and superior courts). Constitution of Ghana, ss 144 & 145(4).

Although the initial appointment process may not necessarily compromise judicial independence, subsequent appointments by way of transfer or promotions are more susceptible to undue executive control.

## **b. PROMOTIONS**

Like the appointment process, the President is responsible for promotions and in that respect is ‘assisted by the Higher Judicial Council which shall give him its opinion on all nominations’.<sup>68</sup>

Promotions are purportedly based on the evaluation of individual judges and subsequent recommendations for promotion. Senior judges<sup>69</sup> of the Supreme Court, Courts of Appeal and the Ministry of Justice are evaluated by the Minister of Justice who subsequently recommends the judges for promotion on the advice of the Secretary General and directors at the Ministry of Justice.<sup>70</sup> Evaluation and recommendation of other judges in the Supreme Court and Courts of Appeal is done by the Presidents of the Supreme Court and Courts of Appeal respectively.<sup>71</sup> For judges in the High Courts and Courts of First Instance responsibility lies with the President and *Procureur Général* of the Court of Appeal for that geographical jurisdiction,<sup>72</sup> acting on the advice of the presidents of the respective courts.<sup>73</sup> Individual judges not recommended may submit a personal request to the Minister through their hierarchical superior (*Procureur Général* or President of the court).<sup>74</sup> A list comprising the names of judges recommended for promotion is submitted by the Minister to the HJC together with reports from the evaluation.<sup>75</sup> The final list is drawn up by the HJC<sup>76</sup> on the basis of the number of votes accorded individual judges by

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<sup>68</sup> Constitution of Cameroon, art 37(3).

<sup>69</sup> That category includes the *Procureur Général* of the Supreme Court and the Courts of Appeal and judges appointed to the Ministry who have attained the level of directors or secretary general in the Ministry.

<sup>70</sup> SOM, art 31(1) (a)-(f), (2) – (4).

<sup>71</sup> SOM, arts 32(2), 34(1).

<sup>72</sup> SOM, art 34(1).

<sup>73</sup> SOM, art 34(2).

<sup>74</sup> SOM, arts 36 & 39.

<sup>75</sup> SOM, art 40.

<sup>76</sup> SOM, arts 30 (1)-(3), 42(2); HJC Law, arts 12, 18(1) & 19(1).

members of that institution.<sup>77</sup> The recommendations are transmitted to the President of the Republic who makes the final decision on promotions and appointments by decree.<sup>78</sup>

On the face of it, the process appears rigorous as it seems to involve a number of stages and different institutions/personalities. However, there are at least three important points worth noting. The first is that, the Minister and other executive authorities in the Ministry control the initial stages of the evaluation process (at least for the most senior judges). This is not entirely satisfactory as it is inconceivable to expect that executive authorities would be aware of the necessary details of the performance of judicial officers to be able to undertake an objective assessment.

Secondly, there is no distinct separation of responsibilities between the personalities responsible for evaluation and nominations, and the institution responsible for recommendations and final appointment. The HJC is composed of the President of the Republic as chair, the Minister of Justice as deputy chair, three parliamentarians, an independent personality appointed by the President, the President of the Supreme Court and three senior judges.<sup>79</sup> It can be seen that (with the exception of the parliamentarians and independent personality) the institution which makes recommendations to the President is composed of the same personalities responsible for evaluation and nomination. This is an objectionable situation as it makes the evaluation and recommendation process almost exclusively in the hands of executive officials or appointees.

A third aspect which negates the process is the fact that there appears to be no objective criteria upon which evaluations are based. That is inherently at odds with judicial independence. A system controlled by the executive and lacking objectivity potentially provides the executive with the means of exerting pressure on judges. Some judges have

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<sup>77</sup> SOM, art 42(3) (4).

<sup>78</sup> SOM, art 6(1). See also SOM, art 29(3).

<sup>79</sup> HJC Law (as amended), art 1(1) (2) (3).

expressed dissatisfaction with the situation in Cameroon asserting that the system is neither transparent nor objective and inhibits their individual independence.<sup>80</sup>

### c. TRANSFERS

Another aspect of the career development process includes transfers which may be functional or geographical and are made by Presidential decree.<sup>81</sup> In practice, judges may be transferred to different geographical locations. With respect to functional transfers as noted earlier, judges can be transferred at various points in their career to serve on the bench, in the LD or the Ministry of Justice. There appears to be no specific criteria for transfers<sup>82</sup> although presumably it may be guided by the promotion process discussed above. According to Epuli SCJ (Supreme Court Judge), ‘There are no clear-cut and binding criteria for postings, transfers...’<sup>83</sup> He questions how judges can be independent under those circumstances.<sup>84</sup> It is asserted within the judicial circle that transfers from the bench to the LD are used as disciplinary measures against judges who exercise decisional independence against the interests of the executive.<sup>85</sup> The measure is also seen as providing the opportunity for activist judges to be subjected to the control of the Minister.<sup>86</sup> Similarly, transfers to remote parts of the country are also said to be made as disciplinary sanctions on judges who assert their independence against the executive.<sup>87</sup>

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<sup>80</sup> Mathias Epuli SCJ, ‘Opening Address’ (Seminar on ‘The Independence of Justice and the Fight Against Corruption in the Judicial System’, Yaoundé, March 2006) <[www.coursupreme.cm/index.php?csc=allocation10](http://www.coursupreme.cm/index.php?csc=allocation10)> accessed 16 March 2011; Helen Fonachu JA, ‘The Criminal Justice System in Cameroon: Problems Faced with regard to Corruption’, (Tenth International Training Course on Criminal Justice Response to Corruption, Tokyo, December 2008) 150, <[www.unafei.or.jp/english/pdf/PDF\\_rms\\_all/no76.pdf](http://www.unafei.or.jp/english/pdf/PDF_rms_all/no76.pdf)> accessed 16 March 2011; Muambo Evande J, ‘Empowering the Judiciary: Making Judicial Power Possible’ (2001)1 *The Imperial Judge: SOWEMAC Judicial Journal* 42, 47-48.

<sup>81</sup> Constitution of Cameroon, art 37(3) and SOM, art 6(1).

<sup>82</sup> Epuli SCJ (n 80); Fonachu JA (n 80) 150; Evande J (n 80) 47-48.

<sup>83</sup> Epuli SCJ (n 80).

<sup>84</sup> *ibid.*

<sup>85</sup> Anyangwe (n 41) 42-43; Nelson Enonchong, ‘Human Rights Violations by the Executive: Complicity of the Judiciary in Cameroon’ (2003) 47 *Journal of African Law* 265, 270; Charles Fombad, ‘Cameroon’s Emergency Powers: a recipe for (un)constitutional Dictatorship?’ (2004) 48 *Journal of African Law* 62, 79.

<sup>86</sup> This point is explained further below.

<sup>87</sup> Anyangwe (n 41) 43; Enonchong (n 85) 270; Fombad, ‘Cameroon’s Emergency Powers’ (n 85) 79. That point will be revisited in the context of the disciplinary system discussed in the next section.

As with appointment and promotions the HJC is required to provide its opinion on transfers.<sup>88</sup> However, that too is an ineffective means to guarantee objectiveness and transparency. Given that the HJC can only provide an opinion rather than binding recommendation, the President retains ultimate control. Moreover, the indeterminacy and opacity of the system for transfers provide a subtle means by which judicial independence can be interfered with. A fairly recent example is illustrative of that point.

In 1997, a former government Minister (Titus Edzoa) and his aid (Thierry Atangana) were charged with embezzlement of public funds and were handed a fifteen year custodial sentence which should have ended in May 2012.<sup>89</sup> There was wide suspicion at the time that the victims were merely political prisoners.<sup>90</sup> The basis for that view was attributed to the fact that three months prior to his arrest, Edzoa had resigned from the government to run for Presidential elections and his co-accused had been his campaign manager. Another dimension of that saga occurred when at the end of 2009, further charges of embezzlement were brought against them with the effect that they were further deprived of their personal liberty after the expiration of the initial 15 year term. The trial for the latter charges had been ongoing in the last three years with frequent adjournments.<sup>91</sup> The court was expected to reach a decision on 18 July 2012.<sup>92</sup> However, on that date, the Mfoundi High Court announced that it was unable to deliver a decision. The reason provided was that one of the judges in the panel of three, who had been hearing the case, was summoned the previous night by the Minister of Justice to take up a

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<sup>88</sup> Constitution of Cameroon, art 37(3) and SOM, art 6(2).

<sup>89</sup> For a discussion of the chronology of that case, see Alfred Ngando, 'L'Affaire Titus Edzoa: "revue de presse" camerounaise' (l'Harmattan 2000).

<sup>90</sup> United States Department of State (USDS), '2011 Human Rights Report: Cameroon' (Bureau of Democracy, Human Rights and Labour, 24 May 2012) s 1(e) at 12 <[www.state.gov/documents/organization/186385.pdf](http://www.state.gov/documents/organization/186385.pdf)> accessed 20 August 2012. See also the 2010 Report at s1(e) pp13-14.

<sup>91</sup> United States Department of State, '2011 Human Rights Report: Cameroon' (n 90) s1(e) at 12.

<sup>92</sup> Georges Dougueli, 'Cameroun: Atangana et Edzoa, Procès à durée Indéterminée' *Jeune Afrique* (Paris, 27 July 2012) <[www.jeuneafrique.com/Article/JA2689P018.xml](http://www.jeuneafrique.com/Article/JA2689P018.xml)> accessed 13 August 2012; Rodrigue Tongue, 'Rouleau Compresseur: Laurent Eso bloque le verdict de l'affaire Edzoa et Atangana' *Le Messager* (Yaoundé, 19 July 2012) <<http://cameroon.info.net/stories/0,36115,@,rouleau-compresseur-laurent-esso-bloque-...>> accessed on 19 July 2012; Nadine Bella, 'Affaire Thierry Atangana: L'Etat fait reprendre le procès' *La Météo* (Yaoundé, 19 July 2012) <<http://cameroon-info.net/stories/0,36114,@,affaire-thierry-atangana-l-etat-fait-reprendre-...>> accessed 19 July 2012.

position in the Ministry with immediate effect.<sup>93</sup> The purported transfer had been made by the President of the Republic in April 2012. The Court announced that the case was to be adjourned until the constitution of a new panel.<sup>94</sup>

The abrupt summoning of the judge was questionable given that the said appointments were made in April. Why for instance, had she not taken up that position since April and what urgent need was there for her to be moved twenty four hours before the verdict in that case? The circumstances continued to render suspect the motives of the executive and fuel suspicions about the political motives surrounding the case. Executive interference in that way led to a delay, and therefore a denial, of justice to the accused. They were eventually handed another custodial sentence of twenty years on 04 October 2012.<sup>95</sup> During a visit to Cameroon on December 16, Amnesty International described them as political prisoners and called for their release.<sup>96</sup>

#### **d. DISCIPLINE**

Like the other processes discussed above, the President of the Republic is responsible for deciding disciplinary sanctions against judges and is assisted in that respect by the HJC.<sup>97</sup> Unlike the other processes, the law is more explicit on conduct that constitutes the basis for disciplinary action. They include lack of professionalism, lack of integrity,

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<sup>93</sup> *ibid.*

<sup>94</sup> *ibid.*

<sup>95</sup> See Jeune Afrique, 'Cameroun : Atangana et Edzoa écotent d'une nouvelle peine de 20 ans de prison' (05 October 2012) <[www.jeuneafrique.com/Article/ARTJAWEB20121005094445/cameroun-justice-proces-paul-biyacameroun-atangana-et-edzoa-ecotent-d-une-nouvelle-peine-de-20-ans-de-prison.html](http://www.jeuneafrique.com/Article/ARTJAWEB20121005094445/cameroun-justice-proces-paul-biyacameroun-atangana-et-edzoa-ecotent-d-une-nouvelle-peine-de-20-ans-de-prison.html)> accessed 12 October 2012.

<sup>96</sup> Lucien Embom, 'Droits de l'Homme: Amnesty International Épinglé le Cameroun' (Yaoundé 16 December 2012) <[www.cameroon-info.net/stories/0,39576,@,droits-de-l-homme-amnesty-international-epingle-le-cameroun.html](http://www.cameroon-info.net/stories/0,39576,@,droits-de-l-homme-amnesty-international-epingle-le-cameroun.html)> accessed 16 December 2012; Michel Tong, 'Amnesty International Appelle à la Libération de M. T. Atangana et Titus Edzoa' *Journal l'Actu* (17 December 2012) <[www.camerounactu.net/en/social/social-pool/3078-amnesty-international-appelle-a-la-liberation-de-m-t-atangana-et-titus-edzoa](http://www.camerounactu.net/en/social/social-pool/3078-amnesty-international-appelle-a-la-liberation-de-m-t-atangana-et-titus-edzoa)> accessed 17 December 2012.

<sup>97</sup> Constitution of Cameroon, art 37(3); HJC Law art 13(1)(2).

impropriety, failure to adhere to the law, breach of duty to the state<sup>98</sup> and breach of the judicial oath.<sup>99</sup>

The disciplinary procedure is triggered by the Minister of Justice who upon receipt of a potential disciplinary file, transfers such to the HJC.<sup>100</sup> Upon receipt, the HJC informs the President who appoints an ad hoc investigatory commission from among the members of the HJC.<sup>101</sup> The report ensuing from the investigation is made available to the HJC and the judge in question.<sup>102</sup> Based on the report, a disciplinary hearing is conducted by the HJC during which the judge under investigation must be present and may be represented by a colleague or counsel.<sup>103</sup> After the hearing, the HJC undertakes further deliberations which are secret and held in the absence of the judge or his counsel.<sup>104</sup> The recommendations are subsequently transmitted by the Minister to the President<sup>105</sup> who ultimately sanctions the judge by decree.<sup>106</sup> The sanctions range from elimination from the promotion list, a freeze on promotion for a maximum of two years, declassification, early retirement, temporary suspension for a maximum of two years and dismissal with or without pension.<sup>107</sup> Lesser sanctions include a reprimand or caution dispensed by presidential order on the advice of the HJC.<sup>108</sup>

The disciplinary system has a number of features which have the potential of infringing on judicial independence. Firstly, some of the conducts that are susceptible to disciplinary action are very broadly defined without some form of objective criteria to identify them. For instance, it is not clear what constitutes a ‘breach of duty to the state’. Secondly, although disciplinary sanctions and conducts have been outlined, the law is silent on the

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<sup>98</sup> SOM, art 46.

<sup>99</sup> The judicial oath is taken by judges upon their first appointment as members of the judiciary. They swear before God and man to render justice impartially, equally and with regard to the laws and customs of the Cameroonian people, without fear or favour and to conduct themselves with dignity and loyalty. See SOM, art 23.

<sup>100</sup> SOM, art 62 (1) (2).

<sup>101</sup> SOM, art 50(1)(a), HJC Law, art 26(2).

<sup>102</sup> SOM, art 57(3), HJC Law, art 29.

<sup>103</sup> HJC Law, arts 30, 31, 32.

<sup>104</sup> SOM, art 59(1) (2), HJC Law, art 33.

<sup>105</sup> SOM, art 59(3).

<sup>106</sup> SOM, art 60(1); HJC Law, art 34.

<sup>107</sup> SOM, art 47(1) (c)-(j).

<sup>108</sup> SOM, art 49(1).

possible corresponding sanctions to be applied to particular misconduct. The assessment is left to the discretion of the HJC, the Minister and ultimately the President. This creates scope for wide discretion and possible arbitrariness as a severe sanction may be imposed on a rather minor misconduct. Thirdly, given that the decision on a disciplinary conduct cannot be appealed against, there is no scope for a judge to challenge the objectiveness of a disciplinary procedure, a sanction or the severity of it in relation to an alleged misconduct.

Another weakness in the system can be gleaned from the actual role of the HJC in regulating the disciplinary procedure. Members of the institutions are charged with the initial process of investigation, preparation of reports, as well as the later stages of the hearing and formulating recommendations. There appears to be little scope for objectivity as the HJC is ‘prosecutor’ and ‘judge’ in the disciplinary process. Although it may be argued that the investigatory commission is made up only of a few members, it is also the case that the investigation is undertaken on behalf of the entire institution and is particularly commissioned by the President. Assuming that the HJC had scope for a measure of objectivity, in any case, the impact of its recommendations is limited. It is endowed with the nominal responsibility of providing its ‘opinion’ rather than a binding recommendation to the President.<sup>109</sup> That institutional design is objectionable given that the HJC sits as an institution which includes the President as chair, deliberates and arrives at recommendations as an institution. Yet, the Minister transmits the same recommendations to the President to unilaterally decide whether or not to proceed with the recommendations arrived at by the institution. The President can disregard the recommendations and rely on his personal opinion guided (or not) by the facts as presented in a particular case. In 2005 for instance, the HJC met as an institution and made recommendations for disciplinary sanctions against thirteen judges for professional misconduct ranging from partiality, corruption and abuse of office. Yet, the President, not entirely adhering to the recommendation of the HJC only sanctioned two of the judges.<sup>110</sup>

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<sup>109</sup> HJC Law, art 13(2).

<sup>110</sup> See Decrees No. 2006/001 and Decree No. 2006/002 of 03 January 2006 to dismiss a Magistrate. *Cameroon Tribune*, Issue No. 8509/470 (Yaoundé, 04 January 2006).



No explanation was provided as to why the others were not sanctioned as per the HJC's recommendations.

Further, the composition of the HJC obviates against its independence given that it is composed predominantly of presidential appointees. In addition, the President retains discretion to select the rest of the membership as they are appointed by presidential decree from amongst nominees originally designated by their peers.<sup>111</sup> For instance, the three parliamentarians are appointed by the President from a list of twenty nominees voted by Parliament, while the judges are appointed from a list of ten nominated by the Supreme Court.<sup>112</sup> Thus, assuming that their initial nomination was objective and therefore some measure of independence could be envisaged, the final appointment process dominated by the President undermines that possibility. Given the nature of its composition, it is doubtful that such an institution would be more inclined to protect the independence of the judiciary than to protect the interest of the President.

Epuli SCJ has in fact condemned the structure of the HJC and the absence of adequate judicial representation.<sup>113</sup> The independence of the HJC and the judiciary in general was raised in *Kevin Mgwanga Gumne et al v Cameroon*,<sup>114</sup> a complaint before the African Commission. The complainants, who were members of the Southern Cameroons National Council (SCNC) and Southern Cameroons Peoples' Organisation (SCAPO),<sup>115</sup> alleged the violation of a number of CPR<sup>116</sup> by the government of Cameroon and violation of article 26 of the African Charter.<sup>117</sup> Cameroon was found in breach of the rights to life, personal liberty, physical integrity and assembly. The Commission stated with respect to article 26 that, the role of the President and the Minister of Justice as chair and vice chair

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<sup>111</sup> HJC Law, art 1(3) (a)-(c) (4) & art 2.

<sup>112</sup> HJC Law, art 1(4).

<sup>113</sup> Epuli SCJ (n 80).

<sup>114</sup> *Kevin Mgwanga Gumne et al v Cameroon*, Communication No. 266/2003 ACHPR (05/2009), Ex.CL/529(XV) Annex 4.

<sup>115</sup> Political organisations advocating secession of the Anglophone minority from the francophone regions.

<sup>116</sup> Including the right to life, personal liberty, equality, physical integrity, assembly and the right to have one's cause heard.

<sup>117</sup> Article 26 of the African Charter on Human and Peoples' Rights provides that, state parties shall have the duty to guarantee the independence of the judiciary and allow the establishment and improvement of appropriate national institutions entrusted with the rights and freedoms guaranteed by the Charter.

of the HJC respectively, ‘is manifest proof that the judiciary is not independent’.<sup>118</sup> It stated further that, ‘The composition of the Higher Judicial Council by other members is not likely to provide the necessary “checks and balance” against the Chairperson, who happens to be the President of the Republic’.<sup>119</sup> It recommended that the executive (in particular the President and the Minister of Justice) cease to be members of that institution.<sup>120</sup> The Commission also recommended that there should be an amicable dialogue between the government of Cameroon, SCAPO and SCNC. However, because the Commission has no means of ensuring the enforcement of its decisions and recommendations it has not been able to compel a change of the law on the HJC or to ensure dialogue between the parties. Thus, the HJC continues to be under the influence of the executive.

Although it is not uncommon for a member of the executive to be present in judicial appointment committees, it is incongruous with the guarantee of judicial independence for the President to chair such a committee, more so be assisted in that respect by the Minister of Justice. That inherently undermines the principle of separation of powers.

In France, the President and Minister of Justice were members of the CSM<sup>121</sup> although recent reforms have now altered that position to the effect that they are no longer members.<sup>122</sup> According to the First President of the *Cour de Cassation* that move was intended to reinforce the independence of the judiciary which had *appeared*<sup>123</sup> to be compromised by the presence of the President and the Minister of Justice.<sup>124</sup> Although

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<sup>118</sup> *Gumne et al v Cameroon* (n 114) 39, para 211.

<sup>119</sup> *ibid* 40, para 212.

<sup>120</sup> *ibid* 41.

<sup>121</sup> French Constitution, art 65(old).

<sup>122</sup> French Constitution, art 65(as amended). See also la Loi Organique du 22 Juillet 2010 which gives effect to French constitutional reforms introduced in 2008. However, the Minister of Justice may have an observatory status in any sessions of the CSM except sessions involving disciplinary hearings.

<sup>123</sup> Emphasis supplied. The use of the word ‘appeared’ seems to indicate that Lamanda himself was not persuaded by the fact that the presence of the President and Minister of justice in the CSM adversely affected the independence of the judiciary. This observation is perhaps supported by the fact that reforms in the French judiciary have been prompted more by the need to conform to the European Convention on Human Rights than a legitimate political impetus to reform the judiciary.

<sup>124</sup> Vincent Lamanda, ‘Discours de M. Vincent Lamanda, Premier Président de la Cour de cassation’ (Audience Solennelle de la Cour de cassation, Paris, 7 January 2011) <[www.conseil-superieurdela magistrature.fr](http://www.conseil-superieurdela magistrature.fr)> accessed 11 March 2011.

the majority of CSM in Francophone Africa have maintained the traditional composition of that institution, there appears to be support for reforms excluding the president, minister of justice and other executive members.<sup>125</sup> On the other hand, in Commonwealth Africa it is more customary for the membership of Judicial Service Commissions to be predominantly independent of the executive.<sup>126</sup> Moreover, they play a more influential role in regulating the judicial career.<sup>127</sup> In Nigeria for instance, judicial appointments are made by the President on the recommendation of the National Judicial Council and with confirmation by the Senate.<sup>128</sup> The President is not a member of the National Judicial Council.<sup>129</sup>

In Cameroon, it can be seen that the judicial tenure is left in the unfettered control of the executive and the supposed ‘balancing’ role of the HJC is a myth rather than reality. The absence of objectivity and transparency and the political nature of the HJC are fundamental inadequacies which provide the executive the potential to control the outcome of cases and the career of judges. As Epuli SCJ and Carlson Anyangwe have acknowledged, various aspects of the judicial tenure (appointment, promotions, transfer and discipline) are used as punitive measures against judges.<sup>130</sup> A judge being aware of his precarious terms of office or being interested in advancing his judicial career is unlikely to completely fail to reflect the interest of the executive in his decisions irrespective of what effect that may have on the protection of a litigant’s CPR.<sup>131</sup> This is particularly so where the executive has a vested interest in a matter before the courts. The apprehension of executive backlash has been witnessed in some politically sensitive cases where some judges have applied creative interpretations of the law ostensibly to unduly protect the executive. Others who have erred on the side of the executive to protect rights have been subjected to reprisal from the latter.

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<sup>125</sup> The composition of the Congolese CSM has been altered to exclude the President and Minister of Justice. See DRC Constitution 2006, art 152(2).

<sup>126</sup> For instance the judicial service commissions of South Africa (Constitution, s 178); Ghana (Constitution, s 153).

<sup>127</sup> *ibid.*

<sup>128</sup> Nigerian Federal Constitution 1999, ss 231(2), 238, 250, 260, 266 and 271.

<sup>129</sup> Nigerian Federal Constitution 1999, s 20 of Schedule 3 Part II.

<sup>130</sup> Epuli, SCJ (n 80); Anyangwe (n 41) 43.

<sup>131</sup> Anyangwe (n 41) 33.

The case of *The People v Nya Henry*<sup>132</sup> is particularly illustrative. In that case, the respondents, mostly members of the SCNC, were arrested on 01 October, 2001 during peaceful celebrations commemorating the end of British colonial rule in Southern Cameroons. They had applied for and were granted bail by the Magistrates Court in Bamenda, but that order was defied by the LD. Consequently, they were not released. In fact the *Procureur Général*, had instructed the LD not to comply with the bail order.<sup>133</sup> The LD instead brought further charges against the respondent before the same judge who considered defiance of the bail order to be a breach of the applicant's right to the presumption of innocence. In consequence, he stayed the proceedings before the Court and ordered the immediate release of the respondents.<sup>134</sup>

The LD appealed that decision before the Bamenda Court of Appeal.<sup>135</sup> The Appeal Court held that the decision to grant bail was wrong as the respondents had not been charged prior to the decision to release them on bail and particularly because the prosecution had asked for more time to prepare a counter-affidavit.<sup>136</sup> It was curious how the Appeal Court arrived at that position given that the law applicable at the time provided a 48 hour limit for filing a counter-affidavit in urgent applications.<sup>137</sup> The LD had had over five days to prepare that counter affidavit and yet it needed more time to do so. The trial judge found that to be very irregular as it would have meant that the respondents would continue to be in detention in breach of their right to personal liberty. Thus, the bail order was to prevent further breaches of that right and their right to the presumption of innocence. The Appeal Court, mindful of those facts was of the opinion that the case was 'serious', without outlining the circumstances that made it 'serious' or exceptional to warrant more than the mandatory time to prepare a counter-affidavit.<sup>138</sup> It did not address the issue of the violation of the respondents' CPR. Rather, it seemed to align more with the LD and was of the view that by staying the proceedings in the trial Court, the judge

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<sup>132</sup> *The People v Nya Henry & 4 Others* (2005) 1CCLR, 61.

<sup>133</sup> *ibid* 64

<sup>134</sup> *Nya Henry* (2005) (n 132), 61

<sup>135</sup> *The People v Nya Henry* (2005) 1CCLR, 61, revd, BCA/MS/11C/2002 (unreported).

<sup>136</sup> Enonchong (n 85) 270-271.

<sup>137</sup> This application fell within that category given that some of the respondents were vulnerable people, with poor health and advanced in age. See *Dr Martin Luma & Orse v The People* (2002) 1CCLR 6, 8.

<sup>138</sup> Enonchong (n 85) 271.

deprived the LD of the opportunity to present its evidence against the respondents. In arriving at that position, the Appeal Court relied neither on legislation nor any judicial authority to support that position.<sup>139</sup> Meanwhile, the trial judge had based his decision on the applicable law<sup>140</sup> and the well established principle in *Connelly v D.P.P.*<sup>141</sup> that the court had inherent powers to protect its process from abuse.<sup>142</sup> As an appellate Court which should provide decisional accountability by way of reviewing the lower Court's decision, its failure to refer to the law or judicial authority to challenge the decision of the lower Court is disappointing. It seemed rather more interested in protecting the interest of the executive regardless of serious breaches of CPR. It even failed to condemn the *Procureur Général's* conduct (the instructions to disregard the bail order) as a breach of duty<sup>143</sup> and that it perpetrated rights violations.<sup>144</sup> The Appeal Court did not hesitate to reverse the trial court's decision. The trial judge had anticipated that outcome. In his judgment, he called on interested observers to 'keenly follow-up the outcome of this case before the superior courts'.<sup>145</sup>

Given the political context of that case, it is not difficult to understand why the LD and the judges in the Appeal Court went to extreme lengths to protect the executive. Their careers were at stake and in order to pre-empt possible negative repercussions they seemed compelled to engage in appalling judicial conduct despite the perpetration of CPR. Their position can be understood more in the light of the outcome of the trial judges' career. The latter was aware of the potential repercussion from the executive as he called on the national and international community and 'those who cherish the status of this country as a state of law [to] keenly follow-up... any developments in the career of this magistrate after this case'.<sup>146</sup> It therefore came as no surprise when he was

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<sup>139</sup> *ibid* 268.

<sup>140</sup> The law applicable at the time was section 301(1) of the Criminal Procedure Ordinance which provided that a complaint dismissed on its merits shall result in the acquittal of the accused.

<sup>141</sup> *Connelly v D.P.P.* [1964] AC 1254, 1354. See also Enonchong (n 85) 267.

<sup>142</sup> Enonchong (n 85) 266-267. See also Andrew Choo, *Abuse of Process and Judicial Stays of Criminal Proceedings* (Oxford University Press 2008) 5-10.

<sup>143</sup> The Legal Department has the responsibility to oversee the execution of bail orders and other court orders, s 545(2).

<sup>144</sup> Enonchong (n 85) 269.

<sup>145</sup> *Nya Henry* (2005) (n 132) 66.

<sup>146</sup> *ibid*.

eventually transferred from the bench to the LD in another jurisdiction.<sup>147</sup> In the light of the sanction imposed on the trial judge, could the judges in the Appeal Court be reasonably expected to exercise their independence?

A similar outcome on the career of some judges was registered in *Wakai v. The People*<sup>148</sup> a case concerning a bail application made to the Mezam High Court. The applicants were supporters of the main political opposition party the Social Democratic Front (SDF) arrested following demonstrations in protest of the results of the 1992 presidential elections which were allegedly rigged in favour of the incumbent President Paul Biya. The proclamation of the results sparked widespread demonstrations in Bamenda, the geographical base of the SDF. A State of Emergency was proclaimed in that area, leading to the arrest of a large number of people including the applicants. They had been arrested under very irregular circumstances, incarcerated in a detention centre notorious for torture and were held for longer than the four month limit imposed by the emergency legislation.<sup>149</sup> The Court noting the irregularities condemned the arbitrariness of the government and admitted the applicants to bail. However, the government failed to release the applicants and instead transferred them to Yaoundé, a different jurisdiction from the Court which ordered their release.<sup>150</sup> With regards to the judges, their independence was sanctioned. The lead judge was transferred from his position as President of the High Court to the LD, while the other two judges were dispersed to remote areas.<sup>151</sup>

The above cases have demonstrated how the scope of the judges' individual independence is so circumscribed that they cannot exercise their substantive independence without the apprehension of reprisal from the executive. Fonachu JA (Appeal Court Judge) explained that, 'In Cameroon, it is the sole prerogative of the president to appoint, promote and transfer judges without the restraints of transparent and

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<sup>147</sup> Enonchong (n 85) 270; Fombad, 'Cameroon's Emergency Powers' (n 85) 79.

<sup>148</sup> *Wakai & 172 Others v. The People*, 1997 (1CCLR) 127. This case has been discussed above in ch 3.

<sup>149</sup> The Court described it as a place where 'God is unknown and satan reigns therein'. See *Wakai* (n 148) 141.

<sup>150</sup> Fombad, 'Cameroon's Emergency Powers' (n 85) 80.

<sup>151</sup> *ibid.* See also Evande J (n 80) 47.

objective selection procedures'.<sup>152</sup> That position not only undermines individual independence, but as discussed below, also affects the judiciary as an institution.

### **3.2. Institutional Independence**

According to Lord Phillips, for a judge to be impartial, he must be personally independent and also 'institutionally independent, that is free of pressure from the State'.<sup>153</sup> The collective independence of the judiciary contributes enormously to the individual independence of a judge. If the judiciary as an institution lacks independence, it is unlikely that individual judges would have the level of independence requisite for their impartiality in adjudication. Moreover, institutional independence can enhance the judiciary's ability to be responsive to the public, provide access to justice and efficient and expeditious administration of justice.<sup>154</sup> Institutional independence requires that the judiciary as a collective has secured funding, is adequately funded, is free from interference from the executive in terms of its administration, and has the power to secure the enforcement of its decisions.

In Cameroon, the judiciary is dependent primarily on the executive at the institutional level, a situation which adversely affects its independence. The situation emanates from the fact that the judiciary is perceived as a department in the Ministry of Justice.<sup>155</sup> As such it is reliant on the executive for funding, hierarchically subordinated to the latter and liable to interference with the internal administration of the courts and judicial processes.

These different components of institutional independence as they relate to Cameroon are discussed below.

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<sup>152</sup> Fonachu JA (n 80) 150.

<sup>153</sup> Lord Phillips (n 15) 1.

<sup>154</sup> Geyh (n 26) 918.

<sup>155</sup> OMJ, art 8.

### 3.2.1. Funding

In Cameroon the judicial budget is neither a fixed percentage of the State's annual budget nor is it charged to a consolidated fund. It relies on the executive through the Ministry of Justice for its funding. That position also affects the mechanisms for providing the remuneration and allowances of judges which are determined by the executive through decrees that are susceptible to change at any time.<sup>156</sup> That arrangement does not provide financial security as would be the case were judicial budgets, salaries and allowances were charged to a consolidated fund which cannot be reduced at the will of the executive. That inadequate framework for guaranteeing financial autonomy provides an additional avenue through which independence can be compromised.<sup>157</sup> Judges in Cameroon perceive the current arrangement as objectionable and assert that it may be used to exert undue influence on the judiciary.<sup>158</sup> Such a scenario was witnessed in 1997 prior to legislative elections when the financial status of the judiciary was unexpectedly improved through an increase in administrative budgets and the salaries and allowances of some senior judges particularly those in the Supreme Court.<sup>159</sup> Although augmentation is important to promote personal independence and effective judicial administration, the motive of the executive was questionable for a number of reasons. Firstly, judges at the time were heads of Divisional Elections Supervisory Commissions and the National Commission for the Final Counting of Votes and therefore could have some influence on the election process.<sup>160</sup> Secondly, the Supreme Court had the duty to confirm and declare the results of the elections and exclusive jurisdiction in electoral petitions.<sup>161</sup> Thirdly, the salary increases came at a very auspicious time for the government. They were made in January prior to elections scheduled in May and did not include the entire judiciary.

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<sup>156</sup> SOM, art 10(3). See also Evande J (n 80) 48.

<sup>157</sup> Kamto (n 45) 15-16; Anyangwe (n 41) 44.

<sup>158</sup> Evande J (n 80) 48.

<sup>159</sup> Decree No. 97/015 and Decree No. 97/016 of 22 January 1997 on Remuneration and Financial Benefits to the President and *Procureur Général* of the Supreme Court; and certain magistrates respectively. See also Fombad, 'A Preliminary Assessment' (n 13) 255; Evaristus Fonkah, 'The Judiciary- not really credible' *African News Bulletin*, Issue No. 337 (Cameroon, 01 January 1998) <<http://ospiti.peaceunit.it/anb-bia/nr337/eos.html>> accessed 16 March 2011.

<sup>160</sup> Commonwealth Secretariat, *Report of the Commonwealth Observer Group to the Parliamentary Elections in Cameroon, 17 May 1997* (Commonwealth Secretariat 1997) 9-10.

<sup>161</sup> Constitution of Cameroon, arts 48 & 67(4).



These factors combined to give the impression that the President was attempting to influence the judges.<sup>162</sup> According to the *Bertelsmann Stiftung*<sup>163</sup> Supreme Court judges who partly regulate the electoral process receive regular salary increases.<sup>164</sup>

In addition to the method of funding, the judiciary is not adequately funded. As discussed earlier, adequate funding is particularly important in terms of the empowering potential of constitutionalism. It requires that the judiciary is provided with the necessary conditions to perform its oversight function, which according to Joseph Raz includes accessibility of the courts.<sup>165</sup> If the courts are considered as avenues through which the population can assert their rights against the government, then they should be accessible. Accessibility also entails a prohibition on adverse factors such as undue delays and excessive cost which may prevent the discharge of justice in a timely manner.<sup>166</sup> Inadequate funding is an aspect that can inhibit the courts' accessibility

In Cameroon some judges have noted that inadequate funding of the judiciary inhibits their ability to be independent of executive influence and hinders effective administration of justice.<sup>167</sup> Until recently, the financial paucity of the judiciary was so great that judges lacked offices and were forced to work in overcrowded environments devoid of basic hygienic conditions.<sup>168</sup> Court buildings had been neglected and were dangerously in disrepair and court sessions had to be cancelled during turbulent weather conditions.<sup>169</sup> CPR (such as personal liberty, access to justice, fair trial) are likely to be adversely affected if adjournments have to be made due to insecurity of court infrastructure resulting from turbulent weather conditions. Although some efforts have been made to

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<sup>162</sup> Fombad, 'A Preliminary Assessment' (n 13) 255; Fonkah (n 159).

<sup>163</sup> Text to (n 21) in the Introduction to this thesis.

<sup>164</sup> Bertelsmann Stiftung, 'Bertelsmann Transformation Index 2012- Cameroon Country Report' (Gütersloh: Bertelsmann Stiftung, 2012) 6 <[www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf](http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf) > accessed 20 July 2012.

<sup>165</sup> Joseph Raz, *The Authority of Law: Essays in Law and Morality* (Oxford University Press 1979) 217.

<sup>166</sup> *ibid.*

<sup>167</sup> Epuli SCJ (n 80); Fonachu JA (n 80) 148-150. See also O. M. Inglis JA, 'The New Challenges in the New Constitutional Dispensation' (1998) *The Common Law in Cameroon* 16; Innocent Bonu, 'Neglect of the Judiciary' (2002) 1 *Cameroon Common Law Journal* 5, 5 paras 18 & 19.

<sup>168</sup> Bonu (n 167) 5 paras 10-12.

<sup>169</sup> *ibid.*

improve on infrastructural facilities,<sup>170</sup> according to some judges they still do not address other underlying issues relating to daily running cost.<sup>171</sup> Fonachu JA, for one, notes that the absence or insufficiency of basic facilities such as computers, ink and papers, preempt rapid access to information which could otherwise lead to more timely access to justice.<sup>172</sup> She specifically highlighted the impact on the investigative role of the *juge d'instruction* who is prone to delay and ineffectiveness due to the absence of the above mentioned resources, including the absence of transportation facilities for the purpose of conducting investigations. Owing to the *juge d'instruction's* pivotal role in preparing evidence for the prosecution, delay tends to affect the length of a suspects pretrial detention. Moreover, the *juge d'instruction* under certain circumstances may be able to make the decision to remand a suspect in custody or to grant bail and that decision may depend on available evidence which if absent might tend to prolong a suspect's stay in pretrial detention.<sup>173</sup>

Admittedly, economic conditions in Cameroon make it difficult for the judiciary to be paid salaries comparable to private sector workers for instance. Nevertheless, their relatively lower status also affects their financial status as they are accorded fewer fringe benefits in comparison with executive officials of equivalent ranking and members of Parliament.<sup>174</sup> If the judiciary continues to be under-funded and to persistently rely on the executive for funding, its financial autonomy will be compromised.<sup>175</sup> As shown above, some CPR may be compromised by that dependence.

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<sup>170</sup> Cameroon Ministry of Justice, '7<sup>th</sup> Periodic Report of the State of Cameroon 2001-2003' CF./OS (XXXIV)/ 332A of the ACHPR, 16.

<sup>171</sup> Epuli SCJ (n 80); Fonachu JA (n 80) 148-150.

<sup>172</sup> Fonachu JA (n 80) 148.

<sup>173</sup> CPC, ss 218-223. See also JOO, s 25(a) (b).

<sup>174</sup> Inglis JA (n 167) 19.

<sup>175</sup> In the Democratic Republic of Congo the judicial budget which was formally under the control of the executive as in Cameroon is now under the control of the Congolese CSM. See Law No. 08/013 of 2008 on the Congolese CSM, art 37(1) and Constitution of the DRC, art 149(6).

### 3.2.2. Judicial Administration and Executive Interference

In addition to financial dependence, the judiciary is not completely free from excessive administrative control. As a department in the Ministry of Justice, the judiciary is susceptible to similar administrative supervisory processes accorded other departments.<sup>176</sup> For that reason, the Ministry supervises court processes,<sup>177</sup> schedules dates and times for court sessions (with the exception of the Supreme Court) pursuant to non-binding recommendations from the presidents of the various courts,<sup>178</sup> organises and oversees training of judicial personnel.<sup>179</sup> Executive interference is also demonstrated through the provision mandating the First President of the Supreme Court and *Procureur Général* to submit annual reports to the President of the Republic on the activities of that Court.<sup>180</sup> It may be argued that such executive controls are necessary to ensure the effective and efficient administration of justice, a public duty for which the government is responsible. As Shimon Shetreet argues, executive supervision of administrative aspects of the courts is a facet of the checks and balances system and does not inherently undermine independence as it is the duty of the executive to maximise the effectiveness of public services in the country.<sup>181</sup> However, that supervisory role is only an acceptable facet of the checks and balances system to the extent that it does not impede on the independence of the judiciary.<sup>182</sup> In the Cameroonian case, that administrative connection to the Ministry further exacerbates the subjection of the judiciary to the executive.

The supervisory role of the executive is a nebulous one which provides scope for executive interference in the guise of enhancing the effective administration of the judiciary. It is not often clear if the executive is exercising a supervisory role or attempting to influence the judiciary. This aspect was raised in a media report published on 13 August 2012 by *Mutations* (one of the leading independent press organs in

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<sup>176</sup> OMJ, art 8.

<sup>177</sup> OMJ, art 11(1).

<sup>178</sup> JOO, s 12(2) (a). The arrangements for the Supreme Court are that sessions are fixed by the First President of the Supreme Court in consultation with Parliament. See Supreme Court Ordinance, s 23.

<sup>179</sup> OMJ, art 60(1); SOM, art 17 (1)-(4).

<sup>180</sup> Supreme Court Ordinance, s 34.

<sup>181</sup> Shetreet (n 13) 650-651.

<sup>182</sup> *ibid.*

Cameroon).<sup>183</sup> The President was reported to be interfering with the judiciary in the guise of exercising his supervisory duties as the supreme magistrate of the State and guarantor of the independence of the judiciary. It was alleged that through the Secretary General at the Presidency, the President requested the Minister of Justice to provide information on the conduct of judges involved in a case where some senior government officials were charged with the embezzlement of funds earmarked for the purchase of a presidential plane. Some of the accused were eventually acquitted on the basis of insufficient evidence. It was widely believed that the prosecution was politically motivated.<sup>184</sup> The question being asked in the press now is whether the executive is actually exercising a supervisory role to ensure the proper administration of justice or preparing to sanction the judges.<sup>185</sup> Were they to be sanctioned, given the absence of objective criteria for discipline as discussed earlier, it will be difficult to uphold the legitimacy of their sanctions in the context of an allegedly politically motivated case where the executive appears not to have been favoured. The President would appear to be attempting to influence the judges<sup>186</sup> rather than exercising a supervisory role. The First President of the Supreme Court of Cameroon, Mouelle P, once stated in the context of discussing the independence of the judiciary that, the ‘disciplinary organs’ have to exercise their powers objectively so as to avoid any situation where the integrity of judges would be put to doubt.<sup>187</sup>

A further institutional dimension through which independence can be compromised is through the hierarchical relation that exists between the judiciary and the Ministry. As a

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<sup>183</sup> Boris Bertolt, ‘Opération Épervier: Paul Biya veut sanctionner des magistrats’ *Mutations* (Yaoundé, 13 August 2012) <[www.cameroon-info.net/stories/0,36747,@,operation-epervier-paul-biya-veut-sanctionner-des-magistrats.html](http://www.cameroon-info.net/stories/0,36747,@,operation-epervier-paul-biya-veut-sanctionner-des-magistrats.html)> accessed 13 August 2012.

<sup>184</sup> The government of Cameroon has recently embarked on wide anti-corruption campaigns which have been criticized for being politically motivated and lacking institutional foundations. See United States Department of State, ‘2011 Human Rights Report: Cameroon’ (n 90) s1(e) at 12. See also Olivier Vallee, *La Police Morale de L’Anticorruption: Cameroun, Nigeria* (Karthala 2010); International Crisis Group, ‘Cameroon: The Dangers of a Fracturing Regime’ (Africa Report No. 161, 24 June 2010) <[www.crisisgroup.org/~media/Files/africa/west-africa/cameroon/161%20CAMEROON...pdf](http://www.crisisgroup.org/~media/Files/africa/west-africa/cameroon/161%20CAMEROON...pdf)> accessed 16 March 2012.

<sup>185</sup> Bertolt (n 183).

<sup>186</sup> *ibid.*

<sup>187</sup> Dipanda Mouelle, ‘Allocution de Monsieur Le Premier President de La Cour Suprême a L’occasion de La Rentrée Solennelle de Ladite Cour’ (Yaoundé, 28 February 2008) <[www.coursupreme.cm/index.php?csc=allocution8](http://www.coursupreme.cm/index.php?csc=allocution8)> last accessed 16 August 2012.

department in that Ministry, the judiciary is hierarchically linked through the LD which is headed by the *Procureur Général*.<sup>188</sup> The law provides that, ‘Members of the Legal Department and Legal Assistants shall be subordinate to the Ministry of Justice’.<sup>189</sup> Thus, judges in the LD, who are prosecutors, are answerable to the Minister of Justice, through the hierarchy of the *Procureur Général*.<sup>190</sup> Unlike judges of the bench who are required to render justice according to the law and their conscience, those in the LD are required to act in accordance with the dictates of the Minister of Justice, as would be required of an ordinary public servant.<sup>191</sup> That point was emphatically stated by the government of Cameroon in its Fourth Periodic Report to the U.N. Human Rights Committee. The government reiterated that ‘Given that Legal Officers represent the Executive in the Judiciary, they are bound to respect the principle of subordination to hierarchy’.<sup>192</sup>

That relationship is particularly tenuous in view of the implication of the concept of *le magistrat polyvalent*. Judges of the bench can be transferred to the LD (and vice versa) at any point in their career. While in the LD, prosecutors become accustomed to acting on the directives of the Minister and may not pursue independent initiatives without prior authorisation from the latter.<sup>193</sup> If subsequently transferred to the bench, a former prosecutor, now judge, is expected to exercise independence after having been trained to revere executive hierarchy. Moreover, the Minister still retains tremendous influence over his career. Anyangwe asserts that a judge in that position cannot ‘suddenly become independent and fearless’, and is more likely to act as a prosecutor than an impartial judge.<sup>194</sup> Similarly, the transfer of an activist judge from the bench to the LD under the circumstances of control and supervision of the *Procureur Général* and ultimately the Minister provides opportunity for the judge to be ‘cowed’ into passivity. Fonachu JA,

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<sup>188</sup> CPC, ss 60 128 and 133(2). See also OMJ, arts 8 & 32(1) para 1.

<sup>189</sup> SOM, art 3(1).

<sup>190</sup> JOO, s 30.

<sup>191</sup> SOM, art 3 (2).

<sup>192</sup> United Nations Human Rights Committee (HRC), ‘Consideration of reports submitted by States parties under article 40 of the International Covenant on Civil and Political Rights: 4th periodic reports of States Parties: Cameroon’ (CCPR/C/CMR/4, 11 May 2009) <[www.unhcr.org/refworld/docid/4a891ec10.html](http://www.unhcr.org/refworld/docid/4a891ec10.html)> accessed 13 December 2010, at 104, para 386. A distinction is made between judicial and legal officers by the government of Cameroon in that report- while judicial officers refers to judges of the bench, legal officers refers to judges in the LD.

<sup>193</sup> Fonachu JA (n 80) 150.

<sup>194</sup> Anyangwe (n 41) 43.

asserts that, ‘With the judiciary under the Ministry of Justice, a judge feels compelled to respond positively to the dictates of he or she who has the power to determine the rise or fall of his or her career’.<sup>195</sup> Further, being away from the bench implies that the judge is kept at a distance from adjudication thereby pre-empting any activism on his part. That perception of the ‘repressive effect’ of the LD on prosecutors explains why transfers to it are considered as punitive measures against judges of the bench who exercise decisional independence against the executive.<sup>196</sup> The *Nya Henry* and *Wakai* cases discussed earlier demonstrated how judges who appeared to be taking a firm stance against executive violation of CPR were transferred to the LD.

The position of the *juge d’instruction* is even more controversial. He is a judge of the bench and at the same time closely connected to the LD. He is in charge of preliminary investigations - in other words he assists the state through the LD to prosecute criminal cases. Though he is a judge of the bench who should act independently, he receives instructions from the LD. By virtue of section 143(1) of the Criminal Procedure Code, he can only investigate on instructions from the LD. Fonachu JA, asserted that in practice the *juge d’instruction* can only proceed to investigate executive officials on the instructions of the Ministry of Justice acting through the LD.<sup>197</sup> It may be conceptually easy to switch from one position to the other. However, in practice it would probably be more difficult. In addition, the position is inherently conflicting and may appear to put a *juge d’instruction* under persistent pressure to submit to hierarchy even when he is presiding over a case. In 2003 the International Bar Association while reviewing the draft Criminal Procedure Code of Cameroon raised concerns about the inter-changeability of judicial functions.<sup>198</sup> It observed that although that practice accorded with aspects of the French system (which Cameroon has adopted), it created insecurity in the judicial

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<sup>195</sup> Fonachu JA (n 80) 150.

<sup>196</sup> Text to (n 85) & (n 86).

<sup>197</sup> Fonachu JA (n 80) 150.

<sup>198</sup> International Bar Association (IBA), ‘Review of the Draft Criminal Procedure Code of Cameroon’ (IBA Human Rights Institute 2003) 5

<[www.ibanet.org/Human\\_Rights\\_Institute/Work\\_by\\_regions/Africa/Cameroon.aspx](http://www.ibanet.org/Human_Rights_Institute/Work_by_regions/Africa/Cameroon.aspx) > accessed 19 November 2012.

tenure.<sup>199</sup> It stated that, ‘An unintended consequence of this insecurity is to ... compromise severely the independence of judges’.<sup>200</sup>

Jacqueline Hodgson in reference to the French position states that the *juge d’instruction* is sometimes thought to be the most powerful judge in France given his powers in the prosecution of offences and the fact that as a judge of the bench he is independent from executive control.<sup>201</sup> Yet, as stated by a prosecutor in a legal department in France, that view ‘is a joke, because we know that we control much of what he does’.<sup>202</sup> Further, with reference to the alternating nature of their functions, some French judges also find it difficult in practice to determine their actual status. According to a *juge d’instruction* interviewed by Hodgson:

Our problem is based on having multiple functions coming out of the same school... Even I question myself: Do I work as a judge, investigator or partner of the police and *Gendarmerie*? I do not know.<sup>203</sup>

In Cameroon, with regard to the LD, it may be argued that given that it is made up of prosecutors, they are not judges *per se* and may appropriately be treated as representatives of the executive. In which case, their subordination to the executive is not inconsistent with judicial independence. Nevertheless, in the particular context of Cameroon where judges can perform both functions, that subordinate position may affect (albeit) indirectly the independence of judges of the bench. If the executive showed particular interest in a specific case through for instance giving specific instructions to the LD through the Minister, it may indirectly affect how a judge presiding over that case perceives of his responsibility. Although a judge should be guided only by the law and his conscience, in a context where the judge relies entirely on the executive for

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<sup>199</sup> *ibid.*

<sup>200</sup> *ibid.*

<sup>201</sup> Jacqueline Hodgson, *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France* (Hart Publishing 2005) 210.

<sup>202</sup> *ibid.*

<sup>203</sup> *ibid.* 70. See also n 25 at 70 where Hodgson refers to Samet (2000:33) in which the role of the *juge d’instruction* is considered surprising and misleading and is being questioned whether he is a ‘judge or investigator, defender of rights or pursuer of wrongs’.

appointments, promotions, transfer and discipline, it is possible to expect that a timid judge may be apprehensive of executive backlash if he exercised his independence. If the circumstances are such that a judge cannot decide a case without fear of reprisal, his independence is potentially compromised.

In addition, where the executive interferes with prosecutorial functions as discussed above, it can undermine the subjective independence of the judiciary. The African Commission whose mandate is partly to monitor the implementation of the African Charter and the rights and freedoms it guarantees,<sup>204</sup> has reiterated with respect to the Cameroonian judiciary that it must be seen to be independent.<sup>205</sup> In *Gumne et al*, as discussed earlier,<sup>206</sup> the complainants were members of two political organisations advocating secession of the English speaking parts of Cameroon from the Francophone section. They complained *inter alia* that the government of Cameroon was in breach of the right to life, personal liberty, equality, physical integrity, assembly and the right to have one's cause heard. They also alleged the violation of article 26 of the African Charter on Human and Peoples' Rights, which entrusts on state parties, the duty to guarantee the independence of the judiciary. The African Commission was clear that the presence of the executive in the judiciary was manifest proof that the judiciary was not independent.<sup>207</sup> It stated further that, 'The executive branch must be seen to be separate from the judiciary' and that 'the judiciary must be seen to be independent'.<sup>208</sup> Although the Commission made some recommendations on reforming the Cameroonian judiciary, the recommendations have not been implemented.<sup>209</sup>

The intricacies involved in the different facets of the Cameroonian judiciary may not be immediately obvious to an ordinary person who may see executive interference as an affront to judicial independence.<sup>210</sup> This was the situation in *Me Eyoun et Cie v État du*

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<sup>204</sup> African Charter on Human and Peoples' Rights, art. 45.

<sup>205</sup> *Gumne et al* (n 114) at 39, para 211.

<sup>206</sup> Text to (n114).

<sup>207</sup> *Gumne et al v Cameroon* (n 114) 39, para 211.

<sup>208</sup> *ibid.*

<sup>209</sup> Text to (n120).

<sup>210</sup> Even in France which has a historical and more entrenched basis for the institutional design, in addition to the fact that people have more access to information and knowledge, the distinction is not always



Cameroun,<sup>211</sup> a habeas corpus application to the Mfoundi High Court. The applicant was a lawyer formerly acting for the government. She was arrested and charged with embezzlement of public funds in complicity with former government officials. She challenged the legality of her detention on the ground that her arrest and detention had been ordered by executive authorities in violation of the principle of separation of powers, as it is the duty of the *juge d'instruction* or the court to order arrest and remand in custody.<sup>212</sup> She argued further that she was being detained on charges formulated by the executive whereas by law, 'preferring of a charge [is] the exclusive prerogative of the [*juge d'instruction*]',<sup>213</sup> Her arguments were based on an alleged administrative correspondence between the Secretary General at the Presidency and the Minister of Justice in which the Secretary addressed the Minister stating that:<sup>214</sup>

*j'ai l'honneur de vous notifier l'Accord du chef de l'État à vos propositions tendant à faire déférer Maîtres Eyoum Yen Lydienne... au Parquet du Tribunal de Grande Instance du Mfoundi en vue de l'ouverture d'une information judiciaire contre eux, avec mandat de détention provisoire, du chef d'accusation de détournement de deniers publics et Complicité.*<sup>215</sup>

The respondent argued that the letter was written to the Minister and not to the *juge d'instruction* and did not therefore constitute encroachment on judicial independence.<sup>216</sup> Moreover, embezzlement constituted a criminal offence for which the applicant was

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obvious. A survey of 1,0008 people representing the French society was conducted and 69% of that number made no distinction between judges of the bench and the LD. See Hodgson, 'The French Prosecutor in Question' (2010) 64 *Washington & Lee Law Review* 1361, 1367 esp. n. 29.

<sup>211</sup> *Me Eyoum et Cie v État du Cameroun*, Ordonnance No 33/HC/TGI, Mfoundi of 27 May 2010.

<sup>212</sup> CPC, s 218.

<sup>213</sup> CPC, s 167(2).

<sup>214</sup> Correspondance No. 156/c6/Sg/Pr of 29 December 2009, reproduced in Jean-Bosco Talla, 'Les Injustices de la Justice' *Germinal* No. 057 (Yaoundé, 26 May 2010) <germinalnewspaper.com/index.php?option=com\_content&view=article&id> accessed 20 March 2011.

<sup>215</sup> *ibid.* Translated as 'I have the honour to notify you that the President is in accord with your proposition to defer counsel Eyoum ...to the Legal Department of the Mfoundi High Court, with a view towards commencing preliminary investigations and issue of a warrant for remand in custody for embezzlement of public funds and complicity' (author's translation).

<sup>216</sup> *Germinal* No. 057 (n 214); Evariste Menounga, 'Cameroun: Me Eyoum restera en détention à Kondengui' *Mutations* (Yaoundé, 19 August 2011) <www.quotidienmutations.info/vivre-aujourd'hui.php?subaction=showfull&id=1313742328&archive=&start\_from=&ucat=3> accessed 20 August 2011; CDS, 'Affaire Yen Eyoum: Le Ministère Public Conclut au Rejet de Toutes les Exceptions' *La Nouvelle Expression* (Yaoundé, 09 February 12) <www.lanouvelleexpression.info/themis/6808-affaire-yen-eyoum-le-ministere-public-conclut-au-rejet-de-toutes-les-exceptions-.html> accessed 12 February 2012.

being lawfully prosecuted. The respondent maintained that the applicant had been lawfully arrested and detained as the procedures were ordered and carried out by the prosecutor. The Court upheld the legality of the detention.<sup>217</sup>

In the *Eyoum* case, although as argued by the respondent, the alleged letter was written to the Minister and not the judiciary, as a matter of administrative hierarchy, the Minister is responsible for the LD through which the instructions were to be carried out. Of course, the admission of the existence of the letter does not ostensibly imply interference with the independence of the presiding judge. However two observations relating to subjective independence can be made from the circumstances of the case.<sup>218</sup>

Firstly, executive interference with the prosecution could have indirectly compromised the independence of the presiding judge. The executive appeared to have demonstrated particular interest in that case in the light of the fact that specific instructions were given to the prosecution. Moreover, not only did the instructions come from the official closest to the President, the latter was to be informed of the progress of the case pursuant to the instructions. This was contained in the correspondence which further instructed the Minister as follows:

*Vous voudrez bien me faire connaître, pour la Très Haute Information du chef de l'État, l'exécution de ces diligences.*<sup>219</sup>

That may have appeared to indicate that the Minister should pay close attention to the development of the case in order to be able to give an account to the President. It should be recalled at this point that the Minister and the President control the career of the presiding judge and have the possibility of reprimanding him particularly in the event of failure to advance the interest of the executive. Although the correspondence was not

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<sup>217</sup> See (n 211) above.

<sup>218</sup> In the context of the political motivation of the case, particularly because the applicant was co-accused with former government ministers who were said to be the main targets of the government. See (n 90) above (on the critic of the anti-corruption campaign).

<sup>219</sup> *Germinal* No. 057 (n 214). Translated as 'Would you be minded to make known to me, for the subsequent information of the President, the execution of those instructions' (author's translation).

addressed to him, it is possible to assume that at some point the fear of jeopardising his career might have preoccupied him. In which case, irrespective of the fact that he may or may not have succumbed to any pressures, his independence had been interfered with.<sup>220</sup>

The second point relates to public perception of the integrity of the judicial process. That case was one of several in the context of a current government clamp down on corruption, a campaign which is widely believed to be politically motivated.<sup>221</sup> The integrity of the judicial process was reportedly questioned by the public as the interference of the executive gave the impression that the independence of the judiciary had been interfered with. As a result, it was impossible to expect that the applicant would be accorded a fair hearing. So, irrespective of the legal basis of the decision to uphold the legality of the applicant's detention, the public believed that the executive had applied pressure on the presiding judge.<sup>222</sup>

Despite the adverse effect on judicial independence resulting from the hierarchical link with the LD, it is sometimes perceived as a good accountability mechanism.<sup>223</sup> In Cameroon Kamto has argued that the system of subordination acts as a form of accountability ensuring the consistent and impartial application of the law.<sup>224</sup> He is keen to highlight the excessive executive dominance of the judiciary. Yet, he argues that the link between the LD and the Ministry needs to be preserved to enable the government to exercise its duty of maintaining law and order and to prevent a system of 'government of

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<sup>220</sup> A judge lamenting the system of hierarchical subordination is reported to have remarked, in relation to the *Eyoum* and other cases in the anti-corruption campaign that, '*Nous subissons de multiples pressions de la part de la chancellerie. Nous ne pouvons rien...*

les magistrats ont les mains liées et aucun d'entre eux ne peut oser aller à l'encontre des directives de l'exécutif transmises via la chancellerie'. Jean-Bosco Talla 'Affaire État du Cameroun C/Me Eyoum Et Cie: Quand Le Magistrat Décide En Catimini' *Germinal* No. 067 (Yaoundé, 03 November 2010). Translated as 'We are under enormous pressure from the Ministry of Justice. We can do nothing... judges have their hands tied and none can dare to act against the instructions of the executive transmitted through the Ministry of Justice'. (Author's translation).

<sup>221</sup> (n 90) above. See also Global Integrity Report: Cameroon – 2010 <[www.globalintegrity.org/report/Cameroon/2010](http://www.globalintegrity.org/report/Cameroon/2010)>; Freedom House, 'Freedom in the World 2011: Cameroon' <[www.freedomhouse.org/report/freedom-world/2011/cameroon](http://www.freedomhouse.org/report/freedom-world/2011/cameroon)>; Business Anti-Corruption Portal, 'Cameroon Country Profile' <[www.business-anti-corruption.dk/country-profiles/sub-saharan-africa/cameroon/show-all/](http://www.business-anti-corruption.dk/country-profiles/sub-saharan-africa/cameroon/show-all/)> accessed 20 July 2012.

<sup>222</sup> Talla, 'Affaire État du Cameroun' (n 215).

<sup>223</sup> Kamto (n 45) 17-18; Hodgson, *The French Criminal Justice System* (n 201) 80.

<sup>224</sup> Kamto (n 45) 17-18.

judges' which can be disruptive to public order.<sup>225</sup> It is submitted that his views obscure a fundamental feature of constitutionalism - the separation of powers. In the absence of the latter, it is difficult to develop a robust checks and balances system through which the judiciary can enhance the protection of CPR. As already seen in the case of Cameroon, the indistinct separation of powers deprives the judiciary of its independence. As a consequence, the ability of the judiciary to deal assertively with executive violation of CPR is undermined.<sup>226</sup>

Epuli SCJ, questioned how judicial independence can be enhanced when the 'Executive branch of government, through the legal department, is a member of all the courts, including the Supreme Court, co-equal with the Bench, with which it shares the dais in court, though it is a party?'<sup>227</sup>

### **3.2.3. Judicial Power**

In spite of all those factors discussed above which militate against the exercise of judicial independence, occasionally, some judges assert their independence by ruling against the executive in favour of victims of CPR violations. But even in those cases the rights of the victims are still not fully protected because the courts decisions against the government are often not enforced. As in other jurisdictions, the judiciary in Cameroon depends on executive officials such as the police for the enforcement of its decisions. The Ministry of Justice is vested with powers to supervise and control the execution of judgments pronounced by criminal courts.<sup>228</sup> This is achieved through the LD which, among other things is responsible for supervising the enforcement of judgments.<sup>229</sup>

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<sup>225</sup> *ibid.*

<sup>226</sup> In August 2012, a judge presiding over a number of the anti-corruption cases resigned from his position allegedly due to enormous pressures from the executive. Jacques W. Ntoul, 'Affaire Nguini Effa: Le président de la collégialité dessaisi du dossier' *Le Messenger* (Douala, 17 August 2012) <[www.cameroon-info.net/stories/0,36825,@,affaire-nguini-effa-le-president-de-la-collegialite-essaisi-du-dossier.html](http://www.cameroon-info.net/stories/0,36825,@,affaire-nguini-effa-le-president-de-la-collegialite-essaisi-du-dossier.html)> accessed 17 August 2012.

<sup>227</sup> Epuli SCJ (n 80).

<sup>228</sup> OMJ, art 32(1) para 3.

<sup>229</sup> CPC, s 11.

Through that supervisory role, the LD acts in collaboration with security forces to ensure that the court orders are enforced.

However, in the context of the subordination of the LD to the Ministry, there is a limit to which the former can enhance enforceability. The LD and its members, judges (prosecutors) are bound to abide by the directives of the Minister and can jeopardise their career by failing to protect the executive. There is therefore some reluctance on the part of the LD to enforce judgments against the executive in favour of a victim of CPR violations. Given its subordinate position, the LD is sometimes under pressure not only to abstain from enforcement but to effectively frustrate enforcement. In *Nya Henry* the trial judge confirmed that he was informed by the clerk of the court and the prosecution that the *Procureur Général* instructed the LD not to enforce the bail order.<sup>230</sup>

In addition to the reluctance of the LD to enforce court decisions against the executive, other officials forming part of the executive such as the police and armed forces, who are required by law to assist in the enforcement of judgments<sup>231</sup> are also unwilling to lend such assistance where enforcement is against the executive. There are at least two reasons for this. First, the armed forces and the police are subordinate to the President of the Republic who is their commander in chief.<sup>232</sup> The President is responsible for their appointments and controls them through the Minister of Defence.<sup>233</sup> Thus their career depends on these two executive officials and therefore affects the nature of the service they render. They would logically seek to preserve the interest of the executive in order to secure their career. The police and armed forces as executive officials have the tendency to showcase their political ascendancy by portraying themselves as being accountable to the executive hierarchy rather than the judiciary.<sup>234</sup> Secondly, there is some innate

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<sup>230</sup> *Nya Henry* (n 132) 64.

<sup>231</sup> CPC, s 11.

<sup>232</sup> Constitution of Cameroon, art 8(2).

<sup>233</sup> Constitution of Cameroon, art 8(10).

<sup>234</sup> See for instance *D. S. Oyebowale v. Company Commander of Gendarmerie for Fako*. Suit No: HCF/0040/HB/09(unreported), discussed below. See also *Albert Chidi v The People*, Suit No: LM/98/M/2002 (unreported); *Namondo Makake v. Bernard O. Bilai* Suit No: HCF/164/IR/04-05 (unreported) ; *Etengeneng J. T. v. The Governor of South West Province*, (1998) 1CCLR 9. (The author is grateful to Barrister Awasume for making available some of the unreported cases).

reluctance of executive officers (security forces) to enforce court orders against their colleagues. Thus enforcing a judgment from the court against an executive authority and in particular where this affects the interest of the state is an idealistic expectation given the normative pressures on the security forces. In the Cameroonian context adherence to judicial orders does not only offset the current imbalance of power between the executive and the judiciary but threatens the career of the enforcement officers who defy the odds to enforce court orders against the executive.

Sadly, as a result of the foregoing, executive officials routinely disregard court orders especially with respect to unlawful detention.<sup>235</sup> According to Evande J (a High Court judge), where a judgment affects the interest of the government, execution is only possible with the latter's cooperation.<sup>236</sup>

The case of *D. S. Oyebowale v. Company Commander Fako*<sup>237</sup> is illustrative of the executive's disregard of court orders in the exceptional cases where the courts attempt to protect victims of CPR violations. In that case, a Nigerian sailor was arrested on the high seas en route to Cameroon by one Mr Leyi Prosper, the Company Commander of the Gendarmerie Company of Fako Division, Cameroon.<sup>238</sup> There was no apparent reason for his arrest, neither were any charges read to him at the time of the arrest. He was later taken to Cameroon and detained at the Gendarmerie Brigade in Limbe. Even at this time, he was not made aware of the reasons for his arrest and detention. The applicant subsequently requested release on medical grounds due to his deteriorating health.

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<sup>235</sup> For instance *Nya Henry* and *Wakai* discussed above. See also *Albert Chidi v The People*, (where security officers refused to comply with a bail order); *Namondo Makake v. Bernard O. Bilai* (where a senior divisional officer failed to comply with a habeas corpus summons); *Etengeneng J. T. v. The Governor of South West Province*, (where a governor failed to comply with a habeas corpus summons). See further *Nji Ignatius v The People*, HCF/22M/03-04, (where security officers refused to release confiscated property contrary to a court order); *Innocent Bonu v. Bakongo* (where the orders of a State Counsel were disobeyed by a police officer), *Benjamin Itoes v. Joseph Ncho*, Suite No. BCA/1/81 (unreported) (where an executive officer failed to comply with an injunction); *S.D.O. v. Shey & Oku Rural Radio Association*, Suite No. BCA/17/2005, (unreported) (where a senior divisional officer failed to make appearances in court in defiance of a court order and persistently undermined a radio station's freedom to broadcast in spite of a judicial injunction against him)

<sup>236</sup> Evande J (n 80).

<sup>237</sup> (n 234) above.

<sup>238</sup> The *gendarmerie* is a para-military police force operating mostly (but not exclusively) in less urban locations.

However, the respondent refused to grant that request. A further application was made to the State Counsel in Limbe for release on bail.<sup>239</sup> This process was again hindered by the refusal of the respondent to report to the State Counsel for a bail hearing. The applicant then filed a motion on notice in the High Court of Buea for an order of habeas corpus. The Court ordered the respondent to appear before it together with the documents authorising the applicant's detention. The respondent flouted this order by failing to appear in Court on the required date. The Court issued a further order for the immediate release of the applicant. Again the respondent failed to enforce this order. The applicant remained in detention for a further sixteen days after which he was released on bail, whereas the Court had ordered his immediate and unconditional release. The attitude of the respondent was clearly contemptuous and he was hardly daunted by the fact that the Court had ordered him twice. His arrogance was further compounded by the fact that he released the applicant on bail.

In *Sub Divisional Officer (SDO) Oku v. Shey Ndifon & Oku Rural Radio Association (ORRA)*<sup>240</sup>, an action was brought against the S.D.O of Oku for repeatedly and unlawfully interfering with the operation of the Oku Rural Radio. He formed a commission to audit the accounts of the ORRA, appointed himself as chair of the commission with remuneration of 180.000CFA from the accounts of that association. He subsequently suspended the Board of ORRA and when a new Board was appointed by ORRA's coordinating committee, the SDO issued an administrative order dissolving that and indefinitely suspending the Station Manager. Due to the repeated interference, the ORRA was pre-empted from its broadcasting service. The Court held that the SDO had no authority to interfere in the management of a private entity such as the ORRA and order him to desist from further interference. However, the SDO failed to respect the decision of the Court and had earlier failed to make an appearance when summoned by the Court.

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<sup>239</sup> CPC, s 224(1) which provides that any person lawfully remanded in custody may be granted bail. See also s 225 which states that an application may be made to the judicial police officer, the State Counsel, the examining magistrate or to any court seized of the matter.

<sup>240</sup> *Sub Divisional Officer (SDO) Oku v. Shey Ndifon & Oku Rural Radio Association*, Suit No. HCB/05M/2003-2004, affd (2005) BCA/17/2005 (unreported).

Similarly, in *Albert Chidi v. The People*,<sup>241</sup> a Nigerian, resident in Cameroon was arrested and detained by security officers and was allegedly tortured while in detention. His resident permit and passports were confiscated by these officers although they alleged that he was an illegal immigrant. He successfully applied to the Court for bail and the return of his documents. However, the security officers failed to release him.

Despite the gravity of the problem,<sup>242</sup> no conspicuous attempts have been made to sanction defiant executive officials. Epuli SCJ, once lamented why, ‘State officials who maliciously resist the enforcement of court decisions, are not brought to book?’<sup>243</sup>

In a 2009 report to the U.N. Human Rights Committee, the government cited the *Wakai* case in support of its assertion that habeas corpus was available in Cameroon to enhance exercise of the right to personal liberty.<sup>244</sup> It is rather peculiar that the government felt confident to cite this example despite the fact that it had failed to release the detainees and instead transferred them from the prison in Bamenda, a common law jurisdiction, to Yaoundé a civil law jurisdiction.<sup>245</sup> The government’s apathy was further evident in a habeas corpus application cited in that same report.<sup>246</sup> The facts briefly were that two Cameroonian citizens were arrested and detained in Ebolowa (Cameroon) for theft allegedly committed in Equatorial Guinea.<sup>247</sup> The Mvila High Court considered that the remand warrant authorising the detention was invalid and ordered the immediate release of the detainees. The order was not enforced and the government in that report simply stated in relation to the detainees that ‘yet the suspects were not released’.<sup>248</sup> The report should have provided an opportunity for the government to showcase its intolerance to those who undermine respect for the rule of law and CPR. It could have indicated that although the detainees were not released measures had been taken to release them or to

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<sup>241</sup> *Albert Chidi v. The People*, Suit No. LM/98/M/2002 (unreported).

<sup>242</sup> See (n 234) & (n 235) where other instances have been cited.

<sup>243</sup> Epuli SCJ (n 80).

<sup>244</sup> U. N. Human Rights Committee, ‘Cameroon’s Fourth Periodic Report’ (n 55) 92, para 309.

<sup>245</sup> At that time, that distinction was material given that the two jurisdictions applied different criminal procedure laws.

<sup>246</sup> Judgment No 19/CIV/LI/TGI of 19 July 2002 on the arrest and detention of Ngoa J. Bienvenue and Tachoula Jean in the Ebolowa prison cited in U. N. Human Rights Committee, ‘Cameroon’s Fourth Periodic Report’ (n 55) 92, para 309.

<sup>247</sup> U. N. Human Rights Committee, ‘Cameroon’s Fourth Periodic Report’ (n 55) 92, para 309.

<sup>248</sup> *ibid.*



pre-empt the recurrence of such incidents. That omission may be indicative of the true position which is that contempt for court orders is not seriously addressed by the executive and the courts' powers are limited.

The institutional independence of the judiciary is constrained by the organisational structure through which the judiciary has been made a department of the Ministry of Justice. According to Fonahcu JA it creates 'an unbalanced state of affairs where the executive imposes its will and has significant control over the judiciary'.<sup>249</sup> That context also affects the individual independence of judges as they tend to rely almost entirely on the executive for the conditions that should insulate them against undue influence from the executive. That situation of excessive executive dominance has further implication for judicial accountability as discussed below.

#### **4. JUDICIAL ACCOUNTABILITY**

Judicial accountability is an important facet of a good checks and balances system. It complements independence to enhance the values that can be protected by an independent judiciary. In Cameroon, there are at least three forms of accountability - public, decisional and political. Political accountability poses the most formidable threat to judicial independence from the perspective of constitutionalism. That is not to say that the other forms of accountability are neither useful, nor are they free of controversies in the context of Cameroon.

Recent denunciation of high corruption levels in the judiciary have led to increasing demands for public accountability.<sup>250</sup> Existing mechanisms seem unsatisfactory. One

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<sup>249</sup> Fonachcu JA (n 80) 150.

<sup>250</sup> The judiciary is ranked as the most corrupt institution in Cameroon. The government of Cameroon affirmed Transparency International's world classification in 2009 which placed the judiciary as the most corrupt institution in the country. See Ministry of Justice, 'Report on Human Rights in Cameroon-2009' 80-81 <[www.spm.gov.cm/uploads/media/Rapport\\_Minjustice\\_Ang\\_2009.pdf](http://www.spm.gov.cm/uploads/media/Rapport_Minjustice_Ang_2009.pdf)> accessed on 12 March 2011. The U.K. House of Commons confirmed that Cameroon was rated 146 of 180 countries on the Transparency International Corruption Perceptions Index 2009 and that the judicial system is widely acknowledged as inefficient, leading to high levels of corruption. See House of Commons Hansard Index on 'Cameroon: Corruption, 6 Jan 2010' Column 408W <[www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100106/text/100106w0018.htm#column\\_408](http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100106/text/100106w0018.htm#column_408)> accessed 19 April 2011; OECD-DAC Secretariat, 'Report of the Multi-Donor Governance and Anti-

approach to enhancing public accountability is the transfer of cases between courts. The law provides that the Supreme Court may, on the basis of suspicion or in the interest of public policy withdraw a case from one court and transfer it to another, within the same jurisdiction or may appoint judges from a different jurisdiction to hear a case.<sup>251</sup> In *Nguemgne v the People & Ngasse*<sup>252</sup> the Supreme Court reaffirmed that reasonable suspicion can be established where there is reasonable ground to believe that a *juge d'instruction* or trial judge is unable to proceed with an investigation or deliver judgment respectively, due to their personal inclination or interests. The application for transfer can be made by any party to the case although only the LD can make a transfer on the basis of public policy.<sup>253</sup> This provision can enable an individual litigant to challenge the impartiality of the court ensuring that injustice is pre-empted. This is very important where there is reasonable suspicion that a judge has received personal favours from a litigant. Nevertheless, it may not act as an effective measure in political cases where the judge is likely to be under pressure from the executive to protect its interest.<sup>254</sup> In such circumstances, the litigant would be powerless irrespective of their legal right to request a transfer. The provision of section 604 of the Criminal Procedure Code may even be counterproductive in the sense that it creates scope for the transfer of cases for purely political reasons. Irrespective of the shortcomings, that provision accords albeit limited scope for the public to hold the courts accountable.

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Corruption Mission to Cameroon' (Paris, July 2006) 8 <OECD.org/dataoecd/40/51/37687235.pdf> accessed on 17 August 2012.

<sup>251</sup> CPC, s 604.

<sup>252</sup> *Nguemgne v the People & Ngasse* Judgment No. 31/FCR of 15 April 2008, cited in Ministry of Justice, CF./OS (XXXIV)/ 332A of the ACHPR.

<sup>253</sup> CPC, s 604.

<sup>254</sup> As was the case in *The People v Dr Martin Luma* (2002) 1CCLR, 11, which was another dimension of the *Nya Henry* saga. The applicant had requested the recusal of the president of the Court of Appeal hearing the substantive appeal in the *Nya Henry* matter on the grounds that the latter had written to the judge during the proceedings in the trial court attempting to influence the course of his decision. The letter was alleged to have been read in court by the judge although it was not mentioned in the record of proceedings. Unable to produce the alleged letter, the applicant could not provide objective evidence that the impartiality of the Appeal Court judge had been compromised. The Court dismissed the recusal application (*Dr Martin Luma*, 12). As stated in the Introduction to this thesis, systemic documentation of information is a problem in Cameroon. It was possible that that problem may have affected the manner in which the documents relevant to that case were filed.

Another approach to enhancing public accountability is the requirement of transparency. The law requires cases and judgments to be heard and delivered respectively in public<sup>255</sup> and for decisions to be written, setting out the reason upon which they are based in fact and in law.<sup>256</sup> A judgment rendered in breach of the latter principle should be considered invalid.<sup>257</sup> The requirement of transparency is an important means by which an individual judge may be exposed to public scrutiny. Further written and reasoned judgment should act as a safeguard against judicial arbitrariness and in addition provide the means by which judicial decisions can be commented on by other members of the public like the media and academics. However, this does not always provide the necessary accountability due in part to the fact that decisions are not published. The lack of adequate funding for the judiciary makes this problem even more severe. Although a number of private initiatives have been undertaken with respect to the publication of judicial decisions, they appear sporadically (due to lack of finance) and the publications are not necessarily affordable.<sup>258</sup> As a result, the dual problem of inadequate information production and inaccessibility undermine the ability of the public to exercise its power of accountability over the judiciary.

With regard to decisional accountability, in principle, judgments from lower courts are subject to review by appeal courts and the Supreme Court which has final appellate jurisdiction.<sup>259</sup> For the purpose of appeal, a copy of the written judgment of the court is required together with record of proceedings and investigatory reports (where necessary) from the police or LD.<sup>260</sup> However, the potential for accountability through appellate review is limited in part by the difficulty of obtaining written decisions (as discussed in the preceding paragraph) and other documents from the courts. Moreover, the general absence of judicial independence limits the extent to which appellate review can serve as an effective mechanism of accountability.

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<sup>255</sup> JOO, s 6(1).

<sup>256</sup> JOO, ss 6 (4) & 7.

<sup>257</sup> JOO, s 7.

<sup>258</sup> Charles M. Fombad,, 'Researching Cameroonian Law', (June/July 07) <[www.nyulawglobal.com/globalex/Cameroon.htm](http://www.nyulawglobal.com/globalex/Cameroon.htm)> accessed 13 August 2009.

<sup>259</sup> CPC, ss 436 & 472 respectively.

<sup>260</sup> CPC, s 445(2) & 484(1).

The orientation of the accountability system is such that judges are more accountable to the executive than the public. The public has no real powers to exercise accountability on the judiciary.<sup>261</sup> The government has stated emphatically that ‘the court is not accountable to the public as far as its decisions are concerned’.<sup>262</sup> As already discussed, the disciplinary procedure and administrative supervisory mechanisms through which the judiciary can be made accountable are entirely controlled by the executive and in particular the President. It is a classic illustration of the tension that can exist between independence and accountability. Epuli SCJ, Fonachu JA and Evande J, have condemned the accountability system which lacks objectivity and its punitive focus for which files are left interminably open.<sup>263</sup> According to them, the system engenders a sense of constant apprehension, a fact which affects a judge’s ability to be independent.<sup>264</sup> The emphasis on disciplinary sanctions was reflected in a speech delivered by President Paul Biya in which he emphasised that the State of Cameroon which empowers the judiciary to ensure compliance with the law is intolerant to error.<sup>265</sup>

Having been modelled after the French judicial system, Cameroon’s executive centred accountability system appears to reflect the historic suspicion of the French judiciary by the executive. According to Antoine Garapon, that background has coloured the idea of accountability which he asserts has no equivalent in the French political lexicon.<sup>266</sup> As a result it has been often equated with notions of responsibility which risk reducing its significance only to disciplinary sanctions or penal liability.<sup>267</sup> Moreover, it justifies

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<sup>261</sup> This partially explains why the judiciary is plagued by endemic corruption.

<sup>262</sup> U.N. Human Rights Committee, ‘Cameroon’s Fourth Periodic Report’ (n 55) 103, para 382.

<sup>263</sup> Epuli SCJ(n 80); Fonachu JA (n 80) 150; Evande J (n 80)47-48.

<sup>264</sup> *ibid.*

<sup>265</sup> President Paul Biya, ‘Presidential Speech’ (Fiftieth anniversary of the National School of Administration and Magistracy, Yaoundé, 01 December 2009) cited in Cameroon Ministry of Justice, ‘Report on Human Rights in Cameroon-2009’

<[www.spm.gov.cm/uploads/media/Rapport\\_Minjustice\\_Ang\\_2009.pdf](http://www.spm.gov.cm/uploads/media/Rapport_Minjustice_Ang_2009.pdf)> accessed on 12 March 2011, at 1.

<sup>266</sup> Antoine Garapon, ‘Une Justice ‘Comptable’ de ses Decisions?’ in Canivet, Andenas and Fairgrieve (eds), *Judicial Independence and Accountability* (British Institute of International and Comparative Law 2006) 13-14.

<sup>267</sup> *ibid.* See also Guy Canivet, ‘The Responsibility of Judges in France’ in Canivet, Andenas and Fairgrieve (eds), *Judicial Independence and Accountability* (British Institute of International and Comparative Law 2006) 31-32 in which he discusses the overwhelming catalogue of criminal and civil liabilities that French judges were exposed to.

political control of aspects of the judicial tenure (such as appointments and discipline).<sup>268</sup> Garapon is of the opinion that more significance needs to be accorded to public accountability which can be enhanced through more effective participation of the public in scrutinising judicial conduct and also through consolidating the role of the judiciary in disciplinary proceedings.<sup>269</sup>

## CONCLUSION

This chapter has analysed the constitutional status of the judiciary and the conditions for guaranteeing its independence. It has demonstrated that, the institutional design adopted under the 1996 Constitution continues to be influence by the French colonial legacy. As a result, the executive continues to be vested with extensive powers which undermine the individual independence of judges and the judiciary as an institution.

With respect to individual independence, the methods of appointment, promotion, transfers, discipline and remuneration of judges is left almost in the unfettered control of the President of the Republic. Even though he should be assisted in the discharge of those duties by the Higher Judicial Council, that institution is almost powerless because the President retains substantial control over it.

At the institutional level, the judiciary has been made a department in the Ministry of Justice. That position makes the judiciary dependent on the executive for its funding, its administration and the effective enforcement of its decisions.

Given that context of subordination, the judiciary is not always in a position to deal assertively with executive violations of CPR. Where judges exercise their independence against the executive, they can be faced with possible executive backlash. Moreover, where judges attempt to exercise their independence, the lack of sufficient judicial power creates obstacles to the enforcement of decisions against executive officials. In the

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<sup>268</sup> Garapon (n 266) 13-14.

<sup>269</sup> *ibid* 242-244. This opinion has been reflected in the judicial reforms in France since the late 1990s, which have reduced the role of the executive in the disciplinary process and entrusted more powers on the judiciary. See Canivet (n 267) 39-42.

circumstances, the judiciary's ability to effectively protect CPR has been severely undermined.

Judicial independence, as discussed earlier, is central to the separation of powers and checks and balances. In Cameroon, the absence of an acceptable standard of judicial independence is a fundamental weakness which affects the robustness of the entire constitutional framework for the protection of CPR. As will be discussed in the next chapter, it undermines the effectiveness of judicial review.

## **Chapter 5**

### **The Framework for Judicial Review**

#### **INTRODUCTION**

This chapter discusses the framework for judicial review in Cameroon. The analysis is based on the assertion in Chapter 1 that judicial review is an important element of constitutionalism which can contribute to a more effective protection and enhancement of CPR.<sup>1</sup> As this chapter will attempt to demonstrate, judicial review continues to be influenced by the French colonial heritage. It will be argued that, the mechanisms provided under the 1996 Constitution are inadequate for the effective protection and enhancement of CPR in Cameroon.

Judicial review will be discussed in terms of the review of legislation for compatibility with the constitution (constitutional review), review of legislation for compatibility with international instruments (conventional review) and the review of the legality of administrative acts (administrative review). With regard to constitutional review, the 1996 Constitution provides for the establishment of a Constitutional Council (Council), to replace the jurisdiction of the Supreme Court exercised under the 1972 Unitary Constitution.<sup>2</sup> However, the Council is yet to become functional. So the Supreme Court continues to exercise that jurisdiction, pending the creation of the Council.<sup>3</sup> With respect to conventional review, article 45 of the Constitution of Cameroon, provides that, duly ratified international instruments are directly enforceable in Cameroon and following their publication, they override national laws. The Constitution appears to allow scope for the form of conventional review discussed below.

This chapter is divided into four major sections. Section one provides a brief outline of the relevant court structure in Cameroon. Section two discusses constitutional review by

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<sup>1</sup> See ch 1, s 3.3 at 48-54.

<sup>2</sup> See ch 2, s 4.2.4 at 95.

<sup>3</sup> Constitution of Cameroon, art 67(4).

the Constitutional Council. Although that institution is yet to become operational, it is important to analyse the jurisdiction of the Council in this respect since it is currently exercised by the Supreme Court. Section three explores the extent to which conventional review is practiced in Cameroon. Section four discusses the mechanisms for administrative review.

## **1. COURT STRUCTURE AND JURISDICTION**

Not every court has jurisdiction to conduct each of the three types of review mentioned earlier. Constitutional review falls within the competence of the Constitutional Council (although currently exercised by the Supreme Court). Administrative courts have exclusive jurisdiction in administrative review. Whereas, jurisdiction in conventional review has not been expressly allocated to any particular court. Nevertheless, ordinary and administrative courts can exercise jurisdiction in conventional review. These courts are discussed below in turn.

### **1.1. The Constitutional Council**

The Constitutional Council is vested with a tripartite jurisdiction, namely ensuring the regularity of presidential and parliamentary elections and referendum operations; settling of disputes between state institutions and the regions; and ruling on the constitutionality of laws, the standing orders of parliament and international treaties and conventions.<sup>4</sup> This chapter will only deal with the Council's jurisdiction in the review of laws and international instruments. The Constitution makes provision for one Council with its seat in Yaoundé.<sup>5</sup> The relevant provisions relating to constitutional review will be discussed below.

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<sup>4</sup> Constitution of Cameroon, art 47(1), 48(1); Law No 2004/004 of 21 April 2004 on the Organisation and Functioning of the Constitutional Council (Constitutional Council Law), art 3(1) & (2).

<sup>5</sup> Constitutional Council Law, art 5(1).



## 1.2. Administrative Courts

Prior to 2006, the Supreme Court was vested with both original and appellate jurisdiction in administrative review.<sup>6</sup> However, a 2006 Law provided for the creation of Lower Administrative Courts in each of the ten administrative Regions in Cameroon, pending an implementing decree.<sup>7</sup> That decree was passed by the President of the Republic in March 2012.<sup>8</sup> The Lower Administrative Courts are to assume original jurisdiction in administrative review.<sup>9</sup> However, they are yet to become functional. Appeals from the Lower Administrative Courts should go to the Supreme Court.<sup>10</sup>

In order to describe the appellate administrative jurisdiction of the Supreme Court, it may be helpful to describe its structure in general. The Supreme Court is the highest appellate court in administrative, audit and judicial matters.<sup>11</sup> It is partitioned into three benches;<sup>12</sup> the Administrative Bench (with jurisdiction in administrative review),<sup>13</sup> the Audit Bench (with jurisdiction in the auditing of public accounts)<sup>14</sup> and the Judicial Bench (with jurisdiction in civil, criminal, commercial and social matters and those relating to customary law).<sup>15</sup> Each of the Benches is composed of divisions<sup>16</sup> which are both headed by presidents.<sup>17</sup> The First President is the overall head of the Supreme Court.<sup>18</sup>

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<sup>6</sup> Constitution of Cameroon, art 40; Law No. 2006/016 of 29 December 2006 on the Organisation and Functioning of the Supreme Court (Supreme Court Ordinance), s 9.

<sup>7</sup> Law No. 2006/022 of 29 December 2006 on the Organisation and Functioning of the Administrative Courts (Administrative Courts Law), s 1.

<sup>8</sup> Decree No. 2012/119 of 15 March 2012 to set up Administrative Courts. (I am grateful to Barrister Charles Atanga for making that Decree available to me).

<sup>9</sup> Administrative Courts Law, s 2(1).

<sup>10</sup> Administrative Courts Law, s 116; Supreme Court Ordinance, s 38(b).

<sup>11</sup> Constitution of Cameroon, art 38(1); Supreme Court Ordinance, s 2.

<sup>12</sup> Constitution of Cameroon, art 38(2); Supreme Court Ordinance, s 7(1).

<sup>13</sup> Constitution of Cameroon, art 40; Supreme Court Ordinance, s 9.

<sup>14</sup> Constitution of Cameroon, art 41; Supreme Court Ordinance, s 10.

<sup>15</sup> Constitution of Cameroon, art 39; Supreme Court Ordinance, s 8.

<sup>16</sup> Supreme Court Ordinance, s 7(2).

<sup>17</sup> Supreme Court Ordinance, s 11(1) and s. 12(1).

<sup>18</sup> Supreme Court Ordinance, s 4(a).

In the Supreme Court, there is also what is referred to as the Joint Benches which is composed of the Administrative, Audit and Judicial Benches.<sup>19</sup> The Joint Bench has jurisdiction in constitutional review.<sup>20</sup>

### **1.3. Ordinary Courts**

Ordinary courts that could have competence in conventional review include, Courts of First Instance, High Courts, Courts of Appeal and the Supreme Court.<sup>21</sup> The Courts of First Instance and High Courts have original jurisdiction in civil and criminal matters.<sup>22</sup> They are located in the administrative Sub-divisions and Divisions respectively.<sup>23</sup> Appeals from those courts go to the Courts of Appeal which are located in each of the ten Administrative Regions in Cameroon.<sup>24</sup>

## **2. CONSTITUTIONAL REVIEW**

Having presented a brief outline of the relevant court structure above, this section will examine in turn, the role of the Council and the Supreme Court in constitutional review. It will attempt to demonstrate that the framework provided for constitutional review is so inadequate that, it undermines the development of a practice of constitutional review in Cameroon. In particular, it will demonstrate that, the weaknesses relate to the limited scope of review, the effect of decisions on the constitutionality of a law and the limitation on the category of persons who have access to constitutional review. There are also specific institutional weakness with respect to the composition and independence of members of the Council and judges in the Supreme Court. As a result of these weaknesses, the practice of constitutional review in Cameroon is largely absent.

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<sup>19</sup> Supreme Court Ordinance, s 15.

<sup>20</sup> Supreme Court Ordinance, s 139(3).

<sup>21</sup> See section 1.2. above for the structure of the Supreme Court.

<sup>22</sup> Law No. 2006/015 of 29 December 2006 on the Organisation of the Judiciary (Judicial Organisation Ordinance, JOO), ss 15(1) & 18(1).

<sup>23</sup> JOO, ss 13(1) & 16(1).

<sup>24</sup> JOO, ss 19(1) & 22.

## 2.1. The Constitutional Council

Although the Council is yet to be established, there is a law with respect to its membership and organisation.<sup>25</sup> It is on the basis of that law and the constitutional provisions relating thereto that judicial review will be examined. The role of the Council will be analysed under four main categories – form of review, effect of review, access and institutional structure.

### 2.1.1. Form of Review

This subsection will discuss the form of review adopted under the 1996 Constitution to show that it is a restricted approach which does not allow scope for the review of enacted laws.

The form of review envisaged by the law is the abstract model based on the *traditional*<sup>26</sup> French *a priori* system of judicial review. The Constitution provides that, ‘Laws as well as treaties and international agreements may, prior to their enactment be referred to the Constitutional Council’<sup>27</sup> for determination of their constitutionality. This implies that the constitutionality of a law may be challenged in the absence of a specific case. Moreover, the challenge relates to bills that have been adopted by Parliament prior to their promulgation.<sup>28</sup> It therefore indicates that, the scope of constitutional review precludes review of enacted legislation.

Nelson Enonchong has argued however that, a closer reading of the Constitution indicates that the scope of review covers enacted legislation.<sup>29</sup> His argument is based in part on article 47(2) of the Constitution which provides that ‘Matters may be referred to

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<sup>25</sup> Constitutional Council Law (n 4) above.

<sup>26</sup> The use of ‘traditional’ is to highlight the fact that, although the French system developed that way, since 2010, post legislative review is practiced in France.

<sup>27</sup> Constitution of Cameroon, art 47(3); Constitutional Council Law, art 3 (1).

<sup>28</sup> Charles Fombad, ‘The New Constitutional Council in a Comparative Perspective: Progress or Retrogression?’ (1998) 42(2) *Journal of African Law* 180, 171.

<sup>29</sup> Nelson Enonchong, ‘Harmonisation of Business Law in Africa: Is Article 42 of the OHADA Treaty a Problem?’ (2007) 51(1) *Journal of African Law* 95, 108.

the Constitutional Council'.<sup>30</sup> In his view, 'matters' can be broadly interpreted to include enacted laws.<sup>31</sup> Therefore, article 47(3) which states that laws may be referred to the Council 'prior to their enactment' is only an enabling provision which makes scope for early challenge but does not preclude post legislative challenge. He also argues that articles 46 and 47 which vest the Council with jurisdiction to review, refer to 'laws' rather than bills.<sup>32</sup> Because bills are not laws until they have been enacted, the Constitution appears to extend the scope of review to enacted legislation.<sup>33</sup>

It is the view of this author that in Cameroon that is not the correct position for a number of reasons. Firstly, articles 46 and 47 state in broad terms the competence of the Council in constitutional review and the regulation of state institutions. Subsequent provisions state in more specific terms the scope of its competence. So, in stating that laws or treaties may be referred 'prior to enactment', article 47(3) specifies the condition of referral under articles 46 and 47(1). Secondly, article 47(3) restricts the scope of the 'matters' referred to in article 47(2). Article 47(3) goes further to state that, laws and treaties may be referred to the Council 'pursuant to the provisions of paragraph (2) above'. The implication is that, the 'matters' to be referred to the Council under article 47(2) are laws, treaties and international agreements '*prior to their enactment*'. Thirdly, it should be recalled that the Cameroonian system is modelled after that of the French *Conseil Constitutionnel* prior to the latter's constitutional reforms in 2008.<sup>34</sup> The position in France was that, the constitutionality of a law adopted by Parliament could not be questioned after its enactment.<sup>35</sup> Though post legislative review is now practiced in

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<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*

<sup>33</sup> *ibid.*

<sup>34</sup> See ch 1, (n 185) at 53. The reforms came into effect in 2010. See Gerald Neuman, 'Anti-Ashwander: Constitutional Litigation as a First Resort in France' (2010) 43(15) *Journal of International Law and Politics* 15; Myriam Hunter-Henin, 'Constitutional Developments and Human Rights in France: One Step Forward, Two Steps Back' (2011) 60 *International Comparative Law Quarterly* 167.

<sup>35</sup> See for instance CC Decision 2001-449 DC of 4 July 2001, where the French *Conseil Constitutionnel* declared inadmissible a petition on the constitutionality of the Voluntary Interruption of Pregnancy & Contraception Act inadmissible because it was brought after the promulgation of the law. See also John Bell, Sophie Boyron & Simon Whittaker, *Principles of French Law* (2<sup>nd</sup> ed, Oxford University Press 2009)42.

France, the Constitution had to be amended for that purpose.<sup>36</sup> It is difficult to envisage the possibility of post legislative review by the Council in Cameroon without a constitutional revision. Enonchong himself acknowledges that, for the three reasons mentioned above, the more widely held view is that the scope of constitutional review in Cameroon is limited to pre-promulgated laws.<sup>37</sup>

But what might be the implications of the *a priori* system from the perspective of constitutionalism as defined in Chapter 1?

A number of advantages may be attributed to that system to the extent that they appear to accord with constitutionalism. Firstly from a general perspective not limited to Cameroon, *a priori* review can be said to promote CPR on the presumption that there is an assurance that the constitutionality of a law would have been determined prior to enforcement.<sup>38</sup> According to Cynthia Vroom, that position can create a degree of certainty in the judicial system.<sup>39</sup> Secondly, it can be seen as a mechanism by which parliament is made to 'police' itself by reviewing its legislation.<sup>40</sup> Alec Stone Sweet asserts that the anticipation of review may cause majority parties to formulate bills in ways that are more constitutionally sound in order to avoid potential review.<sup>41</sup> From that perspective, it can be considered an additional dimension of the checks and balances system. Thirdly, Louis Favoreu perceives this approach as one that accords a reasonable amount of cohesion within the legal order and its pre-emptive nature minimises the high incidence of litigation occurring in other systems which apply a concrete review approach (that is, post legislative review in concrete cases).<sup>42</sup>

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<sup>36</sup> French Constitution, art. 61(1) as amended by Loi Constitutionnelle No. 2008-724 of 23 July 2008 on the Modernisation of the Institutions of the Fifth Republic.

<sup>37</sup> Enonchong (n 29) 107.

<sup>38</sup> Cynthia Vroom, 'Constitutional Protection of Individual Liberties in France: The *Conseil Constitutionnel* Since 1971' (1988-89) 63 *Tulane Law Review* 266, 272; See also Cyril Adjei, 'The Comparative Perspective and the Protection of Human Rights à la Française' (1997) 17(2) *Oxford Journal of Legal Studies* 281, 294-295.

<sup>39</sup> Vroom (n 38) 272.

<sup>40</sup> Adjei (n 38) 295.

<sup>41</sup> Alec Stone Sweet, *The Birth of Judicial Politics in France: The Constitutional Council in Comparative Perspective* (Oxford University Press 1992) 122.

<sup>42</sup> Louis Favoreu, 'Actualité et Légitimité du Contrôle Juridictionnel des Lois en Europe Occidentale' (1984) *Revue du Droit Public et de la Science Politique* 1147, 1187.

However, the *a priori* form of review presents some disadvantages that can undermine the effective enforcement of CPR. Firstly, in a country like Cameroon, CPR can be potentially undermined once a law is promulgated as there is no scope for review. A promulgated law may manifestly or potentially infringe on CPR yet it will subsist in the legal order perpetuating arbitrariness. Thus, until such a time as the legislature may deem it necessary to amend or repeal that law, there will be no possibility of subjecting it to scrutiny. The absence of post-legislative review partly explains why oppressive legislative provisions such as those contained in the laws on freedom of communication, and assembly continue to be applied.<sup>43</sup> These laws constitute a formidable weapon for the arrest of journalists who, while in detention, are often tortured and subjected to cruel, inhuman and degrading treatment.<sup>44</sup>

Secondly, the *a priori* method also undermines the potential for review to promote the adaptability of legislation to reflect evolving conceptions of rights. Charles Fombad asserts that the *a priori* method amounts to a restriction on the Council's ability to contribute actively to the adaptation of law to evolving conceptions of constitutional rights.<sup>45</sup> That assertion can be supported by reference to the contemporary understanding of freedom from discrimination. In international law, the prohibition on discrimination has evolved to include discrimination on the grounds of sexual orientation.<sup>46</sup> The Constitution of Cameroon prohibits discrimination.<sup>47</sup> Yet, under the Cameroonian Penal

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<sup>43</sup> See for instance the Law on the Freedom of Assembly and the incident involving Maurice Kamto discussed in ch 3, s 2.2.2 at 125-126.

<sup>44</sup> For instance *Titianhojo v. Cameroon*, (2007) AHRLR 21 (HRC 2007); *Njaru v. Cameroon*, (2007) AHRLR 21 (HRC 2007) where Cameroonian journalists who had been usually critical of the government were arbitrarily arrested, subjected to lengthy pre-trial detention, torture, cruel and inhumane treatment. See also the report of, Committee to Protect Journalists, 'Attacks on the Press in 2011: Cameroon' (21 February 2012) < <http://cpj.org/africa/cameroon/> > accessed 06 January 2012.

<sup>45</sup> Charles Fombad, 'Protecting Constitutional Values in Africa: A Comparison of Botswana and Cameroon' (2003) 36(1) *The International and Comparative Law Journal of Southern Africa* 83, 100.

<sup>46</sup> For instance the International Covenant on Civil and Political Rights (ICCPR), arts 2 (1) & 26 which prohibit discrimination on any grounds 'such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. The U.N. Human Rights Committee (HRC) has held that the prohibition on discrimination under art 2(1) & 26 must be interpreted as including prohibition of discrimination on the grounds of sexual orientation. See *Toonen v Australia*, Communication No. 488/192 U.N.Doc. (CPR/C/50/D) 488/1992(1994); *Young v Australia* Communication No. 94/2000 U.N.Doc. CCPR/C/78/D/941/2000).

<sup>47</sup> Constitution of Cameroon, Preamble para 5 (1) (13) & (25).

Code which entered into force in 1967,<sup>48</sup> consensual sexual relations between adults of the same gender is a criminal offence punishable with imprisonment for up to five years and a fine of up to 200.000CFA.<sup>49</sup> Some members of the public have been arrested and detained for engaging or attempting to engage in homosexual acts.<sup>50</sup> A mechanism for post legislative constitutional review would have provided scope for the Council to contribute to expanding the scope of the non-discrimination provision in the Constitution.<sup>51</sup>

The absence of post-legislative review is regrettable, especially when considered against the position that existed in the former British Cameroons where post-legislative review was envisaged.<sup>52</sup> As discussed in Chapter 2, that practice provided scope for individuals to stop the application of rights infringing legislation. Other Commonwealth African countries have preserved that practice which continues to provide scope for citizens to challenge the constitutionality of legislative provisions and also contribute to the development of the understanding of constitutional rights.<sup>53</sup> That has been recently

<sup>48</sup> Law No.67/LF/1 of 12 June 1967 Introducing the Cameroonian Penal Code (Penal Code).

<sup>49</sup> Penal Code, s 347. 200.000 CFA is approximately £249. According to United Nations Development Programme (UNDP) statistics, for an ordinary Cameroonian civil servant with a masters degree, it may constitute up to two months salary. Sustainable Development Networking Programme (SDNP), 'Cameroon: Bridging the IT Gaps' (UNDP) <[www.undpegov.org/sdnp/stories/cameroon.html](http://www.undpegov.org/sdnp/stories/cameroon.html)> accessed 19 August 2012.

<sup>50</sup> Human Rights Watch; 'Cameroon: Court Upholds Unjust 'Homosexuality' Conviction' (18 December 2012)<[www.hrw.org/news/2012/12/18/cameroon-court-upholds-unjust-homosexuality-conviction](http://www.hrw.org/news/2012/12/18/cameroon-court-upholds-unjust-homosexuality-conviction)> accessed 18 December 2012; Amnesty International, 'Cameroon Urged to Overhaul Laws Criminalising Gay Relationships' (5 March 2012) <[www.amnesty.org/en/for-media/press-releases/cameroon-urged-overhaul-laws-criminalizing-gay-relationships-2012-03-05](http://www.amnesty.org/en/for-media/press-releases/cameroon-urged-overhaul-laws-criminalizing-gay-relationships-2012-03-05)> accessed 29 August 2012; Alternatives Cameroun et al, 'The Status of Lesbian, Gay, Bisexual and Transgender Rights in Cameroon: A Shadow Report' (June 2010) <[www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTI\\_Cameroon\\_HRC99.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTI_Cameroon_HRC99.pdf)> accessed 29 August 2012.

<sup>51</sup> It is recognised that homosexuality is a criminal offence in some Commonwealth African countries which have mechanisms for post-legislative review. However, due to Cameroon's monist system, international instruments are automatically integrated into domestic law once they have been ratified and they override national laws. Whereas most Commonwealth African countries subscribe to the dualist system where domestication and implementation of international instruments are dependent on an act of parliament. See Franz Viljoen, *International Human Rights Law in Africa* (Oxford University Press 2007) 18, 531- 536. For instance, in the Uganda case of *Shabahurria Matia v Uganda* [1999] UGHC1, the Court held that international law could be of persuasive authority but not binding until they have been incorporated into domestic law.

<sup>52</sup> See ch 2, s 3.4 at 79-80.

<sup>53</sup> See the Ugandan case of *Akankwasa Damian v Uganda* (Constitutional Petition No.5) UGCC7 (21 April 2011) and the Kenyan case of *Jesse Kamau & 25 Others v Attorney General* [2010]KLR 1 (judgement of 24 May 2010) discussed in Jamil Mujuzi, 'Separating the Church from the State: The Kenyan High Courts Decision in *Jesse Kamau & 25 Others v Attorney General* (judgement of 24 May 2010)' (2011) 55(2)

demonstrated in a decision delivered in April 2012 by the High Court in Nairobi (Kenya) in *Patricia Ochieng & Two Others v. Attorney General & another*.<sup>54</sup> The petition concerned the application of the Kenyan Anti-Counterfeit Act 2008, which permitted the Commissioner to confiscate suspected counterfeit products. Section 2 of that law defines counterfeit products in such a way as to include generic drugs for the treatment of HIV/AIDS. The Court held that in so far as that law and its enforcement limit or potentially limit the petitioners' access to affordable and essential drugs for the treatment of HIV/AIDS, it infringed their right to life guaranteed under article 26(1) of the Kenyan Constitution.<sup>55</sup> The Court went further to state that it was incumbent on the state to reconsider article 2 of that Act in the context of its constitutional obligations and to make appropriate amendments to ensure that the petitioners' right to life was not jeopardised.<sup>56</sup>

In France, the *a priori* method may have been justified for historical reasons.<sup>57</sup> Its development there is attributed mainly to the notion of legislative supremacy a product of the French Revolution.<sup>58</sup> Due to the atrocities to which citizens had been subjected by the *parlements* in the *Ancien Regime*, a major goal of the French Revolution was to restore sovereignty with the people and maintain a separation of powers (à la Montesquieu) between the three branches of government.<sup>59</sup> Sovereignty was exercised through the elected representatives. The *Conseil Constitutionnel* was created in 1958 to resolve disputes relating to separation of powers between the legislature and the executive - to

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*Journal of African Law* 314. See also the Ghanaian case of *New Patriotic Party v Electoral Commission* [1993-94] 1Ghana Law Report 124.

<sup>54</sup> *Patricia A. Ochieng & Two Others v. Attorney General & another*, Petition No. 409 of 2009 (unreported). Judgment reproduced at <[www.aidslawproject.org/wp-content/uploads/2012/04/Judgment-Petition-No-409-of-2009-Anti-counterfeit-case.pdf](http://www.aidslawproject.org/wp-content/uploads/2012/04/Judgment-Petition-No-409-of-2009-Anti-counterfeit-case.pdf)> accessed 12 May 2012.

<sup>55</sup> *Ochieng* (n 54) 47-48.

<sup>56</sup> *ibid* 48.

<sup>57</sup> Louis Favoreu, 'La Légitimité du Juge Constitutionnel' (1994) 2 *Revue Internationale de Droit Comparé* 557, 558.

<sup>58</sup> Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Oxford University Press 1989) 153; Martin Rogolf, 'A Comparison of Constitutionalism in France and the United States' (1997) 49 *Maine Law Review* 21.

<sup>59</sup> The *parlements* attributed to themselves the power to review legislation, a power which was exercised in abusive and unpopular manner, fostering inequality and preventing proposed reforms intended for the benefit of the citizens. See Cappelletti (n 58) 153. See also Bailey Stone, *The French Parlements and the Crisis of the Old Regime* (University of North Carolina Press 1986) 3-15.



ensure the legislature did not encroach on the legislative domain of the executive.<sup>60</sup> Again laws could not be challenged once they had been promulgated because these laws which were considered sacrosanct had been voted for by the elected representatives on behalf of the sovereign majority.<sup>61</sup> Judicial review of legislation already in force was regarded as ‘undemocratic’ and likely to orchestrate chaos and imbalance in the separation of powers.<sup>62</sup> Given that historical background, the fact that France has now embraced post legislative review is perhaps a recognition that the *a priori* model is no longer sustainable. In fact, that new approach is said to provide greater scope for the protection of CPR in France.<sup>63</sup>

Unlike France, in Cameroon, no similar historical conflicts existed between state institutions and a stronger case for a more effective system of constitutional review could be made on the basis of Cameroon’s history of excessive executive control of the legislature as discussed in Chapters 2 and 3. Given the context in which the 1996 Constitution was revised and the purport of the government regarding its revision<sup>64</sup> it is regrettable that the government did not seek to embrace a more effective form of review such as that practiced in the former Southern Cameroons.

### ***2.1.2. Effect of Review***

Another problem which may undermine constitutional review in Cameroon is the effectiveness of the Council’s decisions. A notable aspect with regard to the Council’s

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<sup>60</sup> Bell, Boyron & Whittaker (n 35) 147, Sweet, *The Birth of Judicial Politics* (n 41) 47; Vroom (n 38) 273; Rogolf (n 58) 156.

<sup>61</sup> Vroom (n 38) 273; Rogolf (n 58) 56-59 (discussing Carré de Malberg’s ideas on sovereignty); Jean Gicquel & Jean-Éric Gicquel, *Droit Constitutionnel et Institutions Politiques* (24<sup>th</sup> ed, Montchrestien 2010) 200.

<sup>62</sup> Gicquel & Gicquel (n 61) 200.

<sup>63</sup> Neuman (n 34) 42 esp n 82, states that in the first six months of applying the new procedure on post-legislative review, the *Conseil* issued twenty two decisions, seven of which declared provisions of some enacted laws to be unconstitutional. For instance in CC Décision No. 201014/22 QPC of 30 July 2010, the *Conseil* held some provisions of the criminal procedure code with respect to police custody to be unconstitutional for failing to provide adequate protection for the rights of the defence.

<sup>64</sup> Text to (note 15) in the Introduction to this thesis.

powers is that its decisions are binding. However, as discussed below there may be some reason to doubt the finality of its decisions.

For the purpose of review, the Council must be composed of a minimum of nine of its eleven members.<sup>65</sup> Its decisions are obtained through a simple majority and abstention from voting is impermissible.<sup>66</sup> When a law is referred to the Council for review, its promulgation is suspended until the issue of constitutionality has been resolved.<sup>67</sup> Where a law is declared to be in conformity with the constitution, the suspension on enactment is lifted and the statutory enactment deadlines become applicable.<sup>68</sup> On the other hand, the law may be declared unconstitutional. There are two ways to declare a law unconstitutional. First, a provision in a law may be declared unconstitutional although the unconstitutional provision does not affect other provisions of that law. In such a case, the law may be promulgated with the exclusion of that unconstitutional provision.<sup>69</sup> Alternatively, the law may be referred to Parliament for a new reading.<sup>70</sup> Secondly, if an unconstitutional provision affects the constitutionality of the entire legislation, it is declared unconstitutional and the prohibition on enactment or enforcement applies.<sup>71</sup>

According to article 47(1) of the Constitution, the Council's decision on the constitutionality of laws is final. A law declared unconstitutional may not be enacted or enforced.<sup>72</sup> This is confirmed further by provisions which declare that the decisions of the Council are not subject to appeal and are binding on all public, administrative, judicial and military authorities as well as natural and corporate entities.<sup>73</sup> There is a further provision to the effect that, the Council's decisions are to be enforced without delay.<sup>74</sup> These provisions appear to firmly confirm that the Council's decisions are final and

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<sup>65</sup> Constitutional Council Law, art 13(1)

<sup>66</sup> *ibid* art 13(4)

<sup>67</sup> Constitution of Cameroon, art 47(3); Constitutional Council Law, art 22.

<sup>68</sup> Constitutional Council Law, art 23. The statutory enactment deadline is 15 days from the time a law passed by Parliament is forwarded to the President of the Republic. Constitution of Cameroon, art 31.

<sup>69</sup> Constitutional Council Law, art 26.

<sup>70</sup> *ibid* art 26.

<sup>71</sup> *ibid* art 25.

<sup>72</sup> Constitution of Cameroon, art 50(2); Constitutional Council Law art 24.

<sup>73</sup> Constitution of Cameroon, art 50(1); Constitutional Council Law, art 15(3).

<sup>74</sup> Constitutional Council Law, art 15(4).

binding on the above mentioned authorities. There is a sense of certainty which would appear to pre-empt any possible interference with the decision of the Council.

Nevertheless, one aspect appears to dilute the finality of the Council's decision. The law provides that a decision can be amended in the event of a 'material error'.<sup>75</sup> In such a case the Council will revisit the issue and if it determines indeed that the decision is tainted with a material error, the error may be rectified and the decision amended as the Council deems necessary.<sup>76</sup> That process can provide scope for interference with the Council's decision as it may be used for instance by an executive authority to force through the revision of a decision affecting a bill which it might have initiated. The risk is even more palpable because the law is succinct and fails to provide detail or clear guidelines on how to proceed in that aspect. Moreover, if the decisions are not deemed final because of this provision, it might erode general confidence in that institution. Arguably, it may be said that the provision is not an inherent defect as it may indeed be viewed as an avenue for rectification of decisions which may have an adverse effect on CPR enforcement. By and large the provision is Janus faced, for on the one hand it seems to promote efficiency, while on the other, it provides scope for interference with the Council's decisions.

### ***2.1.3. Access to the Council***

Individual access to constitutional justice is an important means through which individuals can assert their constitutional rights. According to Hans Kelsen, the method of introducing a procedure before a constitutional court is of paramount importance as it determines to a great extent the capacity of the court to accomplish its objective of safeguarding the constitution.<sup>77</sup>

Another fundamental weakness of the review mechanism stems from the restriction on standing. The jurisdiction of the Council can only be invoked by the President of the

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<sup>75</sup> Constitutional Council Law, art 16(1).

<sup>76</sup> *ibid* art 17.

<sup>77</sup> Hans Kelsen, 'La Garantie Jurisdictionelle de la Constitution' (1928) 44 *Revue de Droit Public et de la Science Politique* 197, 245.

Republic, the President of the National Assembly, the President of the Senate, one-third of the members of the National Assembly or Senate.<sup>78</sup> Heads of regional executives also have access to the Council where the interest of their regions is likely to be affected by legislation.<sup>79</sup> Two significant problems can be gleaned from this arrangement; the preclusion of individual access and the restricted category with standing.

The absence of individual access can be seen as constituting a denial of access to justice, which in turn constitutes an affront to the rule of law.<sup>80</sup> If the rule of law is perceived as requiring fidelity to principles on the supremacy of law and the prohibition of arbitrariness, a system that prevents individuals from having a stake in ensuring that the law actually prevents arbitrariness, is in itself founded on arbitrariness.<sup>81</sup> In the particular Cameroonian context, the advantage of constitutional review from the perspective of an ordinary citizen is the potential of using that process to ensure that legislators take into account their commitment to CPR enforcement.<sup>82</sup> In the light of discussions in the previous chapters, individual access would have provided the capacity to empower ordinary people with the ability to have greater influence in the way their rights are protected. It is therefore of little value to them if the Council can be seized only by the same state organs who have initiated those laws and are likely to breach CPR.

The second problem is that the category of officials with standing is unlikely to challenge the constitutionality of laws. With regards to the President, it is improbable that a constitutionality challenge will be initiated by him, as he is unlikely to challenge his own laws.<sup>83</sup> As discussed in Chapter 3, there is a general reluctance amongst members of the parliamentary majority to challenge their proposals or those specifically initiated by the

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<sup>78</sup> Constitution of Cameroon, arts 47(2) (3); Constitutional Council Law, art 19(1).

<sup>79</sup> However, according to art 48(2) of the Constitution, an individual can invoke the jurisdiction of the Council to challenge the regularity of parliamentary elections where that individual was a candidate in the elections or acted as an agent of the government in the elections.

<sup>80</sup> See also Joseph Raz, *The Authority of Law: Essays in Law and Morality* (Oxford University Press 1979) 229.

<sup>81</sup> *ibid.*

<sup>82</sup> Cf Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press 2003) 34 who makes a similar argument generally with regards to judicial review.

<sup>83</sup> Particularly in the light of the discussion in Chapter 3 regarding presidential influence on the legislative process.

President.<sup>84</sup> So, it is doubtful that the Presidents of the Senate or National Assembly who are from the ruling party,<sup>85</sup> or that the parliamentary majority, would be inclined to request review of a law which they would have initiated and voted for or even more importantly laws which would have been initiated by the President.

With respect to regional executives, they only have standing where the interest of their region is likely to be affected by legislation.<sup>86</sup> This is unlikely to be the case with the vast majority of legislation concerning CPR which would be nationwide rather than region-specific. The only possible avenue through which a challenge can be envisaged is through the parliamentary opposition where they can constitute one-third of the members of the National Assembly or Senate. But that is a difficult majority to achieve by the opposition in any democracy, the moreso in Cameroon.<sup>87</sup> Currently, a coalition of all the opposition parties in the National Assembly will not amount to the requisite one-third. Moreover, some members of these parties have already been co-opted into the government, further reducing the numerical capacity of the opposition.<sup>88</sup> The inability of the parliamentary opposition to use constitutional review to stop the enactment of a law which could potentially undermine CPR, was demonstrated recently in the context of the enactment of the new electoral code. The opposition was critical of several provisions in the code which granted unfair incumbency advantages to the President and the ruling party, and created scope for electoral rigging.<sup>89</sup> Despite their fierce denunciation, they could not

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<sup>84</sup> See ch 3, s 2.1.1 at 109-110.

<sup>85</sup> The President of the National Assembly must command a majority. See Law No. 73/1 of 08 June 1973 (amended by Law No. 2002/005 of 02 December 2002) on the Internal Rules of the National Assembly, art 12.

<sup>86</sup> Constitution of Cameroon, arts 57-60.

<sup>87</sup> The ruling CPDM party occupies 153 of the 180 seats in the National Assembly.

<sup>88</sup> The Front Pour le Salut National du Cameroun and Mouvement Démocratique pour la Défense de la République are examples of opposition parties that have formed a coalition with the ruling CPDM majority.

<sup>89</sup> For instance s 44(2) empowers the President to dismiss where necessary, the president, vice president, the director or his assistant and members of the electoral board and directorate general, the governing organs of ELECAM. By virtue of s 132(2) government officials have standing to challenge election results or processes, while ss 64 & 68 vests executive officials with power to count votes and rectify vote counting errors. The latter competence provides executive authorities scope for electoral rigging. Moreover, it is potentially contentious because a similar duty is vested in the Constitutional Council (art 48(1) of the Constitution and Constitutional Council Law, art 3(2), (40). In *Basil Yagai (NUDP) v MINATD*, Judgment No. 118/CEL/2007 the Supreme Court (acting as the Constitutional Council) confirmed its jurisdiction to rectify vote counting and other procedural errors and to cancel the elections where an irregularity might have significant outcome on the final results.

apply for review prior to the promulgation of the code. Their best effort has been to organise a coalition with the aim of producing a draft bill to amend some provisions of the code and appealing to the democratic consciousness of the majority and the President.<sup>90</sup>

In France prior to constitutional reforms in 2010, access to the *Conseil Constitutionnel* was restricted to the President, the Prime Minister, the Presidents of the National Assembly and the Senate, or sixty deputies or senators.<sup>91</sup> That restriction had been criticized as one of the defects that rendered the French approach less useful than alternative constitutional review approaches such as in the U.S. The position has now changed to allow ordinary citizens to challenge the constitutionality of laws and a challenge can be raised in the course of litigation in the ordinary courts.<sup>92</sup> That reform was described by the Balladur Committee as a process of creating new rights for the citizens and involving them directly in review proceedings which were previously inaccessible to them.<sup>93</sup>

Similar trends can be observed in some francophone African countries where there has been significant departure from the traditional French model. The Constitution of the Democratic Republic of Congo for instance allows ordinary citizens to challenge the constitutionality of laws by directly seizing the Constitutional Court and constitutionality questions can be raised during litigation in the ordinary courts.<sup>94</sup> Individual access to constitutional courts in francophone Africa has had the most far-reaching effect in Benin where individuals as well as non-governmental human rights organisations can challenge

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<sup>90</sup> Micheal Ndi, 'Fru Ndi Tells Enlarge Opposition Meeting Biya Must Go' *Cameroon Postonline* (27 August 2012) <[www.cameroonpostline.com/Content.aspx?ModuleID=1&ItemID=8852](http://www.cameroonpostline.com/Content.aspx?ModuleID=1&ItemID=8852)> accessed 27 August 2012; Donat Suffo, 'Forum sur le Code Électoral : Le G7 Opte pour une Dynamique Inclusive' *Le Messenger* (Douala, 27 August 2012) <[www.cameroon-info.net/stories/0,37086,@,cameroun-l-opposition-se-taille-un-code-electoral-un-forum-a-regroupe-la-societe.html](http://www.cameroon-info.net/stories/0,37086,@,cameroun-l-opposition-se-taille-un-code-electoral-un-forum-a-regroupe-la-societe.html)> accessed 27 August 2012.

<sup>91</sup> French Constitution, art 61(2).

<sup>92</sup> Loi Organique No. 2009-1523 of 10 December 2009 on the application of art 61-1 of the French Constitution, art 23(1) & (2).

<sup>93</sup> Edouard Balladur et al, 'Comité de Réflexion et de Proposition sur la Modernisation et Le Rééquilibrage des Institutions de La Ve République, Une Ve République plus Démocratique' (Documentation Française October 2007) <[www.ladocumentationfrancaise.fr/rapports-publics/074000697/index.shtml](http://www.ladocumentationfrancaise.fr/rapports-publics/074000697/index.shtml)> accessed 12 March 2011.

<sup>94</sup> Constitution of the Democratic Republic of Congo 2005, art 162.

the constitutionality of laws or regulatory acts that are inconsistent with the exercise of constitutional rights.<sup>95</sup> The Beninese Constitutional Court has played a fundamental role in protecting rights since Benin's democratic renaissance in the 1990s. According to Anna Rotman, individual access 'is *the* key feature that permits the Court to fulfil its mandate of guarantor of human rights'.<sup>96</sup>

The new approach adopted in France and some former French colonies is more in tune with the practise in Commonwealth jurisdictions in Africa where individuals can challenge the constitutionality of laws.<sup>97</sup> In the *Ochieng* petition in Kenya discussed earlier,<sup>98</sup> individuals were able to access the court to assert their right to life against the government without having to wait for politicians to do so. By contrast, in the Cameroonian situation, individuals have continued to be subjected to oppressive legislation without the opportunity to challenge their unconstitutionality. Enonchong asserts that, because the few officials who have standing are unlikely to challenge their own laws, it may account for why there appears to be no reported instance where a bill voted by Parliament was referred to the Council for an opinion on its constitutionality.<sup>99</sup>

#### **2.1.4 Institutional Structure**

Like the scope of review and access, the institutional structure of the Council is not without controversy. There are a number of weaknesses relating to its institutional design that can be an impediment on its effectiveness in the protection of CPR. Three aspects will be highlighted here and they relate to the method of appointment, security of tenure and the competence of the Council's membership.

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<sup>95</sup> Constitution of the Republic of Benin 1990, art 122; Loi No. 91-009 du 31 Mai 2001, Loi Organique sur la Cour Constitutionnelle, art 22. See also, Anna Rotman, 'Benin's Constitutional Court: An Institutional Model for Guaranteeing Human Rights' (2004) 17 *Harvard Human Rights Journal* 281.

<sup>96</sup> Rotman (n 95) 294 (emphasis original). A similar view is expressed by Armand Tanoh & Horace Adjolohoun, 'International Law and Human Rights Litigation in Côte d'Ivoire and Benin' in Magnus Killander (ed), *International Law and Domestic Human Rights Litigation in Africa* (PULP 2010) 116-117.

<sup>97</sup> See the cases cited in (n 53) where individuals were able to access the courts in constitutional review.

<sup>98</sup> Text to (n 54) above.

<sup>99</sup> Enonchong (n 29) 107. Although that observation was made in 2007, the present author found no evidence of a referral made up until the time of writing this thesis.

#### **a. APPOINTMENT**

As discussed in Chapter 1, judicial independence is relevant to the effectiveness of juridical review.<sup>100</sup> One aspect which enhances judicial independence is the method of appointment of judges (or members of the Council in this case). In Cameroon, the method of appointment of the Council's members can undermine their independence and consequently affect their ability to effectively protect CPR.

The Council is composed of eleven members appointed by the President of the Republic based on nominations by the President, the National Assembly, the Senate and the Higher Judicial Council.<sup>101</sup> Each of these categories nominates three of the eleven members with the exception of the Higher Judicial Council which nominates two members.<sup>102</sup> The President of the Council is selected by the President of the Republic.<sup>103</sup> In addition, former Presidents are *ex officio* members for life.<sup>104</sup>

A cursory reading of these arrangements might lead to the conclusion that there is a measure of objectivity in the method of appointment. For instance, the distribution of nominating capacity amongst various institutions appears to be an attempt to achieve equality between these institutions while ensuring the independence of the Council from the three arms of government. However, a more in-depth examination reveals a number of weaknesses which can undermine the independence of the Council's members. Firstly, as discussed in Chapter 3, the President is the *de facto* head of the other branches of government.<sup>105</sup> Secondly, the method of nominating candidates for appointment is highly political. With the exception of the Higher Judicial Council the other institutions are political bodies that are likely to nominate candidates that empathise with their political agenda. The National Assembly for instance is composed of an overwhelming majority of the ruling party. As discussed in Chapter 4, the Higher Judicial Council itself is made

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<sup>100</sup> See ch 1, s 3.3.2 at 56.

<sup>101</sup> Constitution of Cameroon, art 51(1); Constitutional Council Law, art 7(1).

<sup>102</sup> Constitution of Cameroon, art 51(2); Constitutional Council Law, art 7(2).

<sup>103</sup> Constitution of Cameroon, art 51(2); Constitutional Council Law, art 7(3).

<sup>104</sup> Constitution of Cameroon, art 51(2); Constitutional Council Law, art 7(3).

<sup>105</sup> As discussed in Chapters 3 and 4.



up of the President of the Republic and other presidential appointees who may be more inclined to nominate candidates deemed acceptable to the President. The obvious must be stated for the presidential appointees that they are more likely than any other to be persons with an interest in promoting the President's agenda.<sup>106</sup> Thus, the convergence of these would-be presidential empathisers signals not only the imminent over-politicisation of the review process but also the lack of independence of that institution.<sup>107</sup> All the appointees are either directly or indirectly accountable to the President a fact which can militate against their objectivity and impartiality.

#### **b. SECURITY OF TENURE**

Like the method of appointment, security of tenure is an important determinant of the independence of judges. In Cameroon, the provisions for security of tenure may also act as an impediment to the independence of the Council's members.

The members are appointed for a renewable mandate of six years<sup>108</sup> and are irremovable except for acts determined to be grossly inconsistent with their duties or by resignation.<sup>109</sup> As an additional measure of securing their independence, their membership in the Council is inconsistent with any other public office whether elected or by appointment.<sup>110</sup> They benefit from a number of immunities including immunity from civil or criminal prosecution.<sup>111</sup>

It may be argued that the above provisions can provide members a certain degree of security and therefore enhance their independence from the executive. This may well be so in principle but unrealistic in practice. Although the law attempts to regulate

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<sup>106</sup> Fombad holds that due to the influence of the executive in the appointment process, political factors are bound to be decisive in the decision making process. See Fombad, 'The New Cameroonian Constitutional Council' (n 28) 177.

<sup>107</sup> *ibid* 176-178.

<sup>108</sup> Constitution of Cameroon, art 51(1) as amended in 2008. Prior to 2008, the mandate was restricted to a non-renewable term of nine years. Constitutional Council Law, art 7(1).

<sup>109</sup> Law No. 2004/005 of 21 April 2004 relating to the Status of Constitutional Council Membership, arts 9, 10(1), 19.

<sup>110</sup> Status of Constitutional Council Membership, art 8.

<sup>111</sup> Status of Constitutional Council Membership, arts 11 & 12.

incompatibilities with other duties which may impair a member's impartiality, experience in Cameroon has shown that such provisions are not always adhered to even at the highest levels.<sup>112</sup> Furthermore, frequent executive disregard for the rule of law creates pessimism in the effect that laws may have, such that those aspects which appear to insulate the members from executive control are very volatile and could be repudiated at the behest of the executive when necessary to promote the latter's interest. The recent lifting of parliamentary immunities for some members of Parliament, who had become very vociferous in denouncing executive manipulation of the political system to promote arbitrary practices, is indicative of the volatility of any arrangement for the conditions of office or security of tenure.<sup>113</sup> Article 10(1) of the Law on the Status of the Members of the Constitutional Council casts doubts on the supposed immunity from prosecution by stating that a procedure for the arrest or detention of a member may not be carried out without the authorisation of the Council. This is an indication that there are circumstances where the Council itself may give its approval for the arrest of a member. In which case, his mandate may be suspended or terminated.

Article 18 of the Law on the Status of the Members, further exacerbates that volatility by providing that a member's tenure may be terminated at the request of the nominating authority or the Council itself for incompatibility of functions or abuse of office, and violation of the regime, although the termination must be approved by a two-third majority of the Council. While the first two bases for a termination are less contentious and potentially provide rigorous mechanisms for accountability, the third is quite obscure and could be broadly construed to include acts which amount to opposition to the incumbent. The Penal Code for instance sanctions the crime of 'insulting the institution

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<sup>112</sup> Such indifference has been repeatedly demonstrated in the cumulative functions of some members of the ruling party as members of Parliament and heads of executive, local, regional or para-public institutions and heads of national professional institutions as well as engaging in other professional or private activity in contravention of the incompatibility provision in art 13 of the Constitution. See the case of ELECAM discussed in ch 3 at 119-120.

<sup>113</sup> A case in point is that of Hon. Ambassa Zang a CPDM parliamentarian who expressed views opposed to his party (the ruling party). His immunity was lifted in the context of the Épervier anticorruption campaign purportedly for embezzlement of public funds. However, it was widely believed that he was being victimised because of his opposing views and the prosecution had not been able to sufficiently demonstrate a *prima facie* case against him. See Inter Parliamentary Union (IPU), 'Cameroon: Case N° Cm/01 - Dieudonné Ambassa Zang', (IPU Governing Council, Kampala, 5 April 2012) <[www.ipu.org/hr-e/190/Cm01.htm](http://www.ipu.org/hr-e/190/Cm01.htm)> accessed 12 June 2012.

of the presidency'.<sup>114</sup> That provision has been used as the basis for arresting and detaining journalists and activists expressing an opinion on the health of the President or opposing a proposed government policy or programme.<sup>115</sup> It can provide a formidable basis for construing a member's opinion as a violation of the regime, thereby warranting the termination of his tenure as member of the Council. There is no implication here that members should be granted unqualified immunity as that will be inconsistent with the basic understanding of separation of powers and checks and balances. The point being made though is that the arrangements which may appear as providing conditions that can promote independence are so volatile that they cannot be relied upon to achieve that objective.

### c. COMPETENCE

Another questionable aspect relating to composition of the Council is the competence of its membership. There are no specific criteria for determining the competence of members except that they are required to be persons of integrity with established professional reputation and renowned competence.<sup>116</sup> Those are very vague requirements, which are at best minimalist compared to the complex mandate of that institution. There is no guarantee of judicial or other legal membership and in the event that judges are appointed they will be in the minority given that the Higher Judicial Council can only nominate two members. This essentially political setup does not necessarily guarantee competence in the review of legislation. Constitutional review in the hands of politicians stands at risk of being predominantly politicised with the rights element being

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<sup>114</sup> Cameroon Penal Code, s 153(1).

<sup>115</sup> A Cameroonian writer was arrested in November 2011 and charged in the military court with subvention. His arrest followed the publication of a series of books critical of the President. He had also attempted to run as a candidate in the October 2011 presidential election but his candidacy was rejected. Although the charges were subsequently dropped due to the inability of the prosecution to provide sufficient evidence, the author remained in custody until the end of July 2012. See PEN American Centre 'Writer Enoch Meyomessé's detention extended by six months' (Cameroon, 5 July 2012) <[www.pen.org/viewmedia.php/prmMID/6658/prmID/1689](http://www.pen.org/viewmedia.php/prmMID/6658/prmID/1689)> accessed 19 August 2012. See also Celestin Munga's 'Lettre ouverte' to the President of the Republic published in *Le Messager* No. 209 of 27 December 1990 which sparked tension and controversy leading to his being charged with insolence to the President. See further Francis Nyamnjoh, 'Media and Multi-Party Politics in Transitional Cameroon' (1996) 4 *Nord-Süd Aktuell*, 738-752 and the same author in 'Mass Media and Democratisation in Cameroon' (1996) Friedrich Ebert Foundation.

<sup>116</sup> Constitution of Cameroon art 51(1); Status of Constitutional Council Membership, art 2.

undermined. Whereas, judges can be deemed relatively more competent in terms of their legal training as well as experience acquired in the course of their career during which they would have been exposed to the practical interpretation and application of the law. These two aspects give judges an edge over politicians in the review of legislation. Stone Sweet notes that unlike judges, legislators in the absence of a concrete case before them are not sufficiently aware of the specific constraints that may arise from the application of a bill being debated.<sup>117</sup>

It is not suggested here that membership outside of the judiciary or legal profession is unwarranted. In fact, there is need for a range of perspectives to provide a wider view of the ways in which legislation can have practical effects beyond the confines of the written text. For Cameroon in particular broader judicial and legal membership can be useful for at least two reasons. Firstly, in addition to the reasons outlined above (on the special competence of judges) judges and legal practitioners have specialised knowledge and training in methods of legal interpretation and reasoning which are relevant skills for constitutional adjudication. Their presence will potentially enrich the proceedings of the Council.<sup>118</sup> Secondly, although an attempt is made not to overstate the point, having noted the excessive executive influence on almost every aspect of the Cameroonian judicial and political system, it is not unrealistic to assume that the political appointees of the Council will be more inclined to promoting their political agenda and upholding the will of the executive rather than reviewing legislation to guarantee the protection of CPR. Admittedly, judges too being under executive influence will possibly be subjected to the same pressure. Yet, it is possible that a wider judicial and other legal membership may provide basic standards of constitutional adjudication which may well make a difference. The approach that accords predominant reliance on judicial membership is consistent with the practice adopted by some constitutional courts. The Beninese Constitutional Court for instance requires a high level of legal competence. It is composed of seven

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<sup>117</sup> Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe* (Oxford University Press 2000) 196.

<sup>118</sup> A similar view has been expressed by John Arthur and Tom Ginsburg generally with regard to the competence of judges. See John Arthur, 'Judicial Review, Democracy and the Special Competency of Judges' in Richard Bellamy (ed), *Constitutionalism, Democracy and Sovereignty: American and European Perspectives* (Aldershot 1996) 68-70; Ginsburg (n 82) 42-43.

members, three of whom are magistrates and two law professors or prominent jurists or legal practitioner, with a minimum professional experience of fifteen years.<sup>119</sup> Similarly, the German Constitutional Court leans heavily on judicial membership. It is made up of two panels,<sup>120</sup> each composed obligatorily of six Supreme Court judges and two other members either law professors and former politicians who in practice, have usually been regional or federal ministers of justice.<sup>121</sup> Another extreme approach leans exclusively on legal competence. Notable examples are the Italian Constitutional Court which is made up of fifteen members selected from among serving or retired judges, lawyers and law professors; and the South African Constitutional Court made up of the Chief Justice and Deputy Chief Justice and nine other judges.<sup>122</sup> What can be inferred from these approaches is the importance accorded to the competence of judicial personnel in constitutional adjudication.

The preceding subsection has discussed the framework for constitutional review by the Constitutional Council. It has demonstrated that it is deficient in terms of its restricted scope of review, the questionable effect of its decision, the limited access to the Council and its inadequate institutional structure. These aspects undermine the extent to which constitutional review by the Council can contribute to the effective protection of CPR in Cameroon. In particular, they undermine the development of a practice of judicial review in Cameroon. As discussed below, the position is similar with respect to the Supreme Court while it exercises jurisdiction in constitutional review, pending the establishment of the Council.

## **2.2. The Supreme Court**

The applicable provision vesting the Supreme Court (hereafter the Court) with jurisdiction in constitutional review is article 67(4) of the Constitution which provides that the Court ‘shall perform the duties of the Constitutional Council until the latter is set

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<sup>119</sup> Constitution of Benin, art 115. Members of the Beninese Constitutional Court lauded the fact that its composition also includes non-judicial members adding that they bring new perspectives to the decision making process. See Rotman (n 95) 296.

<sup>120</sup> German Constitutional Court Law, art 2(1).

<sup>121</sup> German Constitutional Court Law, art 2(2), (3), 3(2).

<sup>122</sup> South African Constitution, s 167(1) (that subsection substituted by s 11 of Act No. 34 of 2001).

up'. It is important to mention that, in terms of the scope of review, effects of review and standing, the provisions relating to the Constitutional Council are applicable to the Court while it exercises that jurisdiction.<sup>123</sup> This subsection will examine the composition of the Court and specific weaknesses associated to it, which can undermine the effectiveness of constitutional review and therefore, the protection of CPR.

### ***2.2.1. Composition***

The Supreme Court Ordinance makes different provisions for the composition of the Court in constitutional review. The Court is specially constituted by a panel of the Joint Benches<sup>124</sup> which includes the Presidents of the divisions within the Court, the Presidents of the three different Benches and the First President of the Court.<sup>125</sup> The panel of Joint Benches is presided by the First President<sup>126</sup> who has the discretion to appoint one or more additional advisers to participate in the proceedings.<sup>127</sup> The law requires all the judges of the Joint Benches to be present for the Court to be regularly constituted for constitutional review.<sup>128</sup> However, in the event that a judge is absent, he may be replaced by an adviser appointed by the First President.<sup>129</sup>

Referrals for review are made to the First President of the Court by the persons or officials with standing.<sup>130</sup> The Court would be required to deliver its decision within fifteen days from the date of referral.<sup>131</sup> However, that period may be reduced to eight days at the request of the President of the Republic.<sup>132</sup>

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<sup>123</sup> Supreme Court Ordinance, s 139(2)

<sup>124</sup> That is, the Judicial, Administrative and Audit Benches.

<sup>125</sup> Supreme Court Ordinance, s 15(1).

<sup>126</sup> *ibid* ss 139(1) & 16 respectively.

<sup>127</sup> *ibid* s 15(2).

<sup>128</sup> *ibid* s 17(1).

<sup>129</sup> *ibid* s 17(2).

<sup>130</sup> *ibid* s 139(2).

<sup>131</sup> Constitution of Cameroon, art 49; Supreme Court Ordinance, s 139(3).

<sup>132</sup> *ibid*.

### 2.2.2. Weaknesses

Like the Constitutional Council, the Supreme Court's jurisdiction in constitutional review is undermined by the restricted scope of review, the restriction on standing and the possibility of its decisions being subject to amendment on the ground of 'material error'. In addition, as a Court in the judicial system, it is also affected by the wider problem of lack of judicial independence discussed in Chapter 4. In view of the discussion in Chapter 3, relating to the fact that a significant proportion of legislation adopted have emanated from the President, it is difficult to see how assertive the judges can be in the event that a referral is made to the Court.

The perceived lack of independence of the Court is also enhanced by the absence of transparency in the review proceedings. The law provides that hearings of the Court in this respect are not open to the public although its decisions are required to be read in public.<sup>133</sup> The cynicism with which constitutional review is treated is evident in that lack of transparency, particularly when considered against the Court's hearings in electoral disputes which are open to the public.<sup>134</sup>

By and large, as seen above, the framework for constitutional review whether by the Supreme Court or the Constitutional Council (when it is established) is inadequate for the protection and enhancement of CPR in Cameroon. The restricted scope of review and the restriction on standing hinder the development of a practice of constitutional review in Cameroon. In the absence of an effective system or practice of constitutional review, laws which potentially or inherently inhibit the exercise of CPR continue to be applied.

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<sup>133</sup> Supreme Court Ordinance, s 139(4); Constitutional Council Law, art 15(1).

<sup>134</sup> Supreme Court Ordinance, s 139(4).

### 3. CONVENTIONAL REVIEW

The review of compatibility of national legislation with international instruments may be an avenue through which some form of post legislative review can be envisaged in Cameroon. In legal systems such as that of Cameroon and France which subscribe to monism, international treaties become directly enforceable once ratified through the applicable domestic procedures. An advantage of that system is that it immediately expands the range of rights available at the domestic level without having to wait for an implementing parliamentary act as would be the case in dualist systems.<sup>135</sup> In France, that advantage has been stretched further by the courts to provide an alternative mechanism for the review of national legislation to determine their compatibility with international instruments.<sup>136</sup> This practice is known as '*le contrôle de conventionnalité (conventionnalité)*'.<sup>137</sup>

This section examines the extent to which conventional review is available in Cameroon as a mechanism for the protection of CPR. It will examine the constitutional context and the approach of the courts to conventional review in Cameroon. To do so effectively, it may be helpful first to consider how that practice has developed in France.

#### 3.1. The Position in France

In France, the practice of conventional review was established by the *Cour de Cassation (Cour)*<sup>138</sup> in *Société des Cafés Jacques Vabre*.<sup>139</sup> In that case, the *Cour* declined to apply section 265 of the Custom Code of 1966 on the basis of incompatibility with article 95 of the Treaty of Rome.<sup>140</sup> The *Cour* referred to article 55 of the French Constitution which

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<sup>135</sup> Text to (n 51) above.

<sup>136</sup> Bell, Boyron & Whittaker (n35) 18-19; Hunter-Henin (n 34) 170; Gicquel & Gicquel (n 61) 113; Neuman (n 34) 17; Rogolf (n 58) 77; Dennis Tallon, John Hazard & George Bermann, 'The Constitution and the Courts in France' (1979) 27(4) *The American Journal of Comparative Law* 567, 574.

<sup>137</sup> Gicquel & Gicquel (n 61) 113; Neuman (n 34) 17.

<sup>138</sup> France's supreme appellate judicial court.

<sup>139</sup> *Syndicat Général des Ingénieurs-conseils & Administration des Douanes v. Société des Cafés Jacques Vabre*, Judgment of 24 May 1975, CC(chamber mixte), 1975, D.S. Jur, (Fr) 497.

<sup>140</sup> Treaty of Rome 1957, establishing the European Economic Community.



provides that duly ratified international instruments once promulgated, have an authority superior to that of national laws, provided the other party implements the same.<sup>141</sup> The *Cour* reasoned that, through that provision, the legislator intended to give precedence to the Treaty.<sup>142</sup> It followed that, the Custom Code though enacted after the Treaty, could not be applied due to its incompatibility.<sup>143</sup>

The *Conseil d'État*<sup>144</sup> subsequently followed that position in the *Nicolo* case to review a legislative provision for compatibility with the Treaty of Rome.<sup>145</sup> Although those initial cases were reviewed on the basis of that Treaty, the jurisprudence of the courts has developed to include other international instruments.<sup>146</sup> The practice of *conventionnalité* is said to have effectively filled a gap in the system for the protection of rights in France where post-legislative review was previously unavailable.<sup>147</sup> Moreover because the *Conseil d'État* and the *Cour* do not have the restriction on standing which applies to the *Conseil Constitutionnel*, *conventionnalité* allows ordinary citizens direct access to the courts.

### 3.2. Conventional Review in Cameroon: The Constitutional Context

In Cameroon, as is the case in France, the Constitution gives pre-eminence to duly ratified international instruments. Article 45 of the Cameroonian Constitution provides that, 'Duly approved or ratified treaties and international agreements shall, following their publication, override national laws'. This appears to indicate that, domestic law should be compatible with duly ratified international instruments.

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<sup>141</sup> The reciprocity condition is not applicable to international instruments on fundamental rights. See Decision No. 98-408 DC of 22 January 1999.

<sup>142</sup> *Cafés Jacques Vabre* (n 139).

<sup>143</sup> *ibid.*

<sup>144</sup> France's supreme appellate administrative court.

<sup>145</sup> CE, Ass. 20 October 1989, *Nicolo*, Rec. Lebon, 190.

<sup>146</sup> *Hunter-Henin* (n 34) 171; Bell, Boyron & Whittaker (n35) 20.

<sup>147</sup> *ibid.* See also, *Gicquel & Gicquel* (n 61) 113; *Neuman* (n 34) 23.

However, as discussed below it is not clear if the courts in Cameroon can go as far as the courts in France, to review the compatibility of domestic laws with international instruments on the basis of article 45 of the Constitution.

### 3.3. The Approach of the Courts in Cameroon

In Cameroon, the jurisprudence of the ordinary or administrative courts in conventional review is sparse and inconsistent.<sup>148</sup> There is a tendency for the courts to recognise international instruments as part of domestic law and to refer to the constitutional provision affirming Cameroon's attachment to some human rights instruments and other duly ratified treaties. For instance in *Compagnie Commerciale et Immobilière*<sup>149</sup> the Court held that international instruments were a source of domestic law, the violation of which could form the basis of an action. Similarly, in *The People v Nya Henry*<sup>150</sup> the Court stated that the presumption of innocence was a constitutional right as well as a human right protected under article 11 of the Universal Declaration of Human Rights, to which Cameroon affirms its attachment. However, these were cases where the complaint was about an administrative act rather than a legislative provision. It is therefore open to doubt whether the courts would have been prepared to declare national law incompatible with the international instruments mentioned.

There is some reluctance on the part of the courts in engaging with contentious issues such as reviewing the compatibility of legislative provisions with international instruments.<sup>151</sup> In *Standard Chartered Bank v Paul Sinju et Autres*<sup>152</sup> the Supreme Court refrained from addressing an issue relating to the application of a provision of the Treaty

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<sup>148</sup> Brusil Metou 'Le Moyen de Droit International Devant Les Juridictions Internes en Afrique : Quelques Exemples d'Afrique Noire Francophone' (2009) 22(1) *Revue Québécoise de Droit International* 129, 135.

<sup>149</sup> *Compagnie Commerciale et Immobilière Africaine des Chargeurs Réunis v État du Cameroun Oriental*, Arrêt No. 163/A/CFJ/CAY of 08 June 1971 cited in Metou (n 148) 130.

<sup>150</sup> *The People v Nya Henry & 4 Others* (2005) 1CCLR 61, 65. This case was discussed in ch 4 at 171-173.

<sup>151</sup> Metou (n 148) 139 -140.

<sup>152</sup> *Standard Chartered Bank v Paul Sinju et Autres*, Judgment No. 32/CS/CA of 27 October 2005. Discussed in Metou (n 148) 140.

on the Harmonisation of Business Law in Africa (OHADA Treaty)<sup>153</sup> in Cameroon.<sup>154</sup> Although it concerned a procedural matter which could be dealt with under Cameroonian law, the Court referred the question to the OHADA Common Court of Justice and Arbitration in Abidjan.<sup>155</sup> Similarly, in *Mounchipou et Autres*<sup>156</sup> the defendants were charged with embezzlement and attempted embezzlement of public funds. They argued that, the provision under which they were charged conflicted with provisions of the Marrakesh Agreement Establishing the World Trade Organisation.<sup>157</sup> Although that argument was repeatedly raised by the defendants, the court did not address the issue of compatibility but decided the case on a different ground.<sup>158</sup> In *Wakai & 72 Others v The People*<sup>159</sup> the Mezam High Court missed an opportunity to express an opinion on the possibility of conventional review. It stated that:

It is settled law that when there is any *action* purportedly under local legislation which conflicts with international conventions to which the country in question is a signatory, the *action* under local legislation must give way to the international convention...<sup>160</sup>

The Court appeared to be concerned only with the acts taken pursuant to the domestic legislation rather than the legislation itself. Though it ruled that the acts were arbitrary and therefore a violation of CPR, it was careful to emphasise that it was not concerned with the regulatory instruments under which the offending actions had been taken.<sup>161</sup>

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<sup>153</sup> Treaty on the Harmonisation of Business Law in Africa, 17 October 1993. OHADA is the acronym for the French official title of the Treaty which reads, L'Organisation pour l'Harmonisation en Afrique du Droit des Affaires.

<sup>154</sup> *Metou* (n 148) 140.

<sup>155</sup> *ibid.*

<sup>156</sup> *Ministère Public et Ministère des Postes et Télécommunications v Sieur Mounchipou et Autres*, discussed in *Metou* (n 148) 140.

<sup>157</sup> The Marrakesh Agreement Establishing the World Trade Organisation, April 1994. Available at <[www.wto.org/english/docs\\_e/legal\\_e/04-wto.pdf](http://www.wto.org/english/docs_e/legal_e/04-wto.pdf)>.

<sup>158</sup> *Metou* (n 148) 140.

<sup>159</sup> *Wakai & 72 Others v The People* (1997) 1CCLR 127, 135–136. This case was discussed in chs 3 & 4 at 137-138 & 174 respectively.

<sup>160</sup> *Wakai* (n 159) at 136. Emphasis added.

<sup>161</sup> *Wakai* (n 159) at 136.

The reluctance of the courts is particularly evident in the application of section 347 of the Penal Code which criminalises homosexual acts. Ironically, another provision of the Penal Code states that, ‘This Code and every provision of criminal law shall be subject to the rules of international law and to all treaties duly promulgated and published’.<sup>162</sup> This is a clear indication that the legislator intended to give precedence to international law and therefore the provisions of the Code should be compatible with international law. This should provide perhaps an uncontroversial basis for declaring section 347 of the Penal code incompatible with international instruments such as the ICCPR which has been ratified by Cameroon.<sup>163</sup> Yet, the courts have continued to apply the rights-infringing provision of the Code.<sup>164</sup>

However, two other decisions give some indication that there is scope to develop the practice of conventional review in Cameroon. In *Maïramou Oumarou*<sup>165</sup> the Court of First Instance in Ngaoundéré in a matter on attempted forced marriage, stated that it was a negative traditional practice which violated the African Charter on the Rights and Welfare of the Child.<sup>166</sup> It went further to state that, Cameroonian law, in particular section 356 of the Penal Code which prohibits forced marriage was in conformity with article 16 (1) (b) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>167</sup> Although the complaint in this case involved an act which the Court condemned, it went further to declare that the relevant domestic provision was compatible with international law.

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<sup>162</sup> Penal Code, s 2(1).

<sup>163</sup> Cameroon ratified the ICCPR in 1984.

<sup>164</sup> Text to (n 50) above.

<sup>165</sup> *Maïramou Oumarou*, Jugement No. 404/cor of 12 May 2003, discussed in Metou (n 148) 161-162.

<sup>166</sup> African Charter on the Rights and Welfare of the Child, CAB/LEG/24.9/49 (1990).

<sup>167</sup> Conventions on the Elimination of All Forms of Discrimination Against Women, art 16(1) ‘States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women’; (b) ‘The same right freely to choose a spouse and to enter into marriage only with their free and full consent.’

Similarly, in *S.A. Ami Voyage v Ayisi Ndzana et autres*,<sup>168</sup> the Court of First Instance in Yaoundé stated that article 45 of the Constitution was in conformity with article 10 of the OHADA Treaty because it affirms the supremacy of international law in the domestic legal order, a normative requirement under the OHADA Treaty.<sup>169</sup> The Court went further to state that:

*Tout juge national saisi dans le cadre de sa compétence a l'obligation d'appliquer intégralement le droit communautaire et de protéger les droits que celui-ci confère aux particuliers en laissant inappliquée toute disposition éventuellement contraire de la loi nationale, que celle-ci soit antérieure ou postérieure.*<sup>170</sup>

The Court seemed to be endorsing the possibility of conventional review in stating that provisions of domestic law inconsistent with the OHADA Treaty should be set aside to protect the rights that the Treaty confers on individuals. Although in this case, the Court's statement is restricted to the OHADA Treaty, there is scope for conventional review to extend to other international instruments.<sup>171</sup> The Court in *Mairamou* for instance referred to the CEDAW to determine the conformity of the relevant national law.<sup>172</sup>

If the courts are assertive and develop an effective practice of conventional review, there is reason to hope that it will provide another mechanism in the framework for CPR enforcement in Cameroon, given the absence of post-legislative constitutional review. Moreover because in the case of conventional review, the relevant courts are those that

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<sup>168</sup> *S.A. Ami Voyage v Ayisi Ndzana et autres*, Ordonnance de Référé No. 200/C/TPI/Y of 30 November 2000 (unreported). Also discussed in Metou (n 148) 162.

<sup>169</sup> OHADA Treaty, art 10, 'Uniform Acts are directly applicable and overriding in the Contracting States notwithstanding any conflict they may give rise to in respect of previous or subsequent enactment of municipal laws' (translation provided by Juris International). Available at <[www.jurisint.org/ohada/text/text.01.en.html](http://www.jurisint.org/ohada/text/text.01.en.html)> accessed 26 November 2012.

<sup>170</sup> Metou (n 148) 162. Translated as 'A domestic judge seized in a matter within his competence, is obliged to apply the community law in its entirety and to protect the rights that it confers on individuals, setting aside provisions of domestic legislation which are incompatible with the community law, whether enacted prior to or after the community law' (author's translation).

<sup>171</sup> Conventional review in France started with the Treaty of Rome but has extended to other international instruments. See Hunter-Henin (n 34) 171; Bell, Boyron & Whittaker (n35) 20.

<sup>172</sup> *Mairamou* (n 165).

are accessible to ordinary litigants, it can alleviate the problem of standing affecting constitutional review as discussed earlier. However, it is not clear that the Courts in Cameroon will be quick to develop the practice of conventional review. As Brusil Metou argues, the courts are reluctant to assertively engage in conventional review because the only form of review of legislation expressly provided in the law is *a priori* constitutional review.<sup>173</sup> Moreover, due to their constitutional position vis-à-vis the executive and legislature, judges are torn between upholding the sovereignty and independence of the State and upholding international law.<sup>174</sup> They are more inclined to maintaining the coherence of national laws. She argues that the judges in the *Mairamou* and *Ami Voyages* cases, did not seem too daunted to express an opinion on compatibility because the relevant national laws were not inconsistent with the international instruments mentioned.<sup>175</sup> In her view, if the domestic provisions appeared to be incompatible with the international instruments, it was unlikely that the judges would have made a declaration of incompatibility.<sup>176</sup> That assessment seems to be supported by the approach of the courts to the homosexuality provision discussed earlier. Although there is some basis for declaring it incompatible with international instruments, the courts have continued to apply it.

By and large, it is possible to assume that the courts can engage in conventional review to provide some form of post-legislative review to enhance the effective protection of CPR. Such a practice can provide scope for the review of legislative provisions such as those criminalising press offences or homosexuality, with international instruments ratified by Cameroon. Moreover, it will provide individuals more direct access to the courts to challenge rights-infringing legislative provisions. However, given the constrained institutional environment in which judges operate, their capacity to actively engage in constitutional review may be limited.

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<sup>173</sup> Metou (n 148) 133.

<sup>174</sup> *ibid.*

<sup>175</sup> *ibid* 161-162.

<sup>176</sup> *ibid.*

#### 4. ADMINISTRATIVE REVIEW

Having examined the mechanisms for the review of legislation, this section focuses on the review of the legality of administrative acts. It will attempt to demonstrate that although the law provides for a system of administrative review, it is not very effective and does not include all executive acts. As a result, CPR are not sufficiently protected against executive violations.

In Cameroon, administrative review is modelled after the French system which distinguishes between ordinary courts and administrative courts. That system reflects the French approach to the doctrine of separation of powers whereby the judiciary is subordinated to the executive. Consistent with that doctrine is the notion that ordinary judges are precluded from reviewing administrative acts.<sup>177</sup> Rather, as representatives of the executive, administrative officials can only be brought before special administrative courts.<sup>178</sup>

Jurisdiction in administrative review is vested in Lower Administrative Courts which have original jurisdiction and the Supreme Court (Administrative Bench) which has appellate jurisdiction.<sup>179</sup> As earlier mentioned, although there is a decree purportedly establishing Lower Administrative Courts, they are yet to become functional. So, the discussion will be focused primarily on the Supreme Court.

This section is partitioned into three subsections. The first discusses the scope of review to demonstrate to what extent administrative authorities can be subjected to the rule of law. The second subsection will examine a category exempt from judicial review. This is known as *actes de gouvernement* (acts of the government) a category which includes some regulatory acts of the executive. This is an important aspect with respect to constitutionalism given that, as was discussed in Chapter 3, the President is vested with

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<sup>177</sup> Neville Brown and John Bell, *French Administrative Law* (5th ed, Oxford University Press 1998) 127-128; John Allison, *A Continental Distinction in the Common Law: A Historical and Comparative Perspective on English Public Law* (Oxford University Press 1996) 142.

<sup>178</sup> *ibid.*

<sup>179</sup> Administrative Courts Law, s 2; Supreme Court Ordinance, s 38.

considerable legislative authority exercised in the form of decrees and ordinances. Yet, the exercise of decree powers under certain circumstances is exempt from review. The third subsection discusses some of the problems associated with administrative review and how they affect the realisation of CPR.

#### 4.1. Scope of Review

While administrative authorities are vested with powers to exercise authority in their respective services that should be done within the limits of the law granting such powers. The administrative courts review administrative acts to ensure compliance with the law, including laws on CPR. Thus, they have competence to entertain petitions for the annulment of ultra vires or unlawful acts, claims for damages resulting from an administrative act, disputes emanating from contracts or public service concessions, disputes relating to state land and disputes emanating from the application of procedures on the maintenance of law and order.<sup>180</sup> Ultra vires acts as defined by the law include acts that are bad in form, made without jurisdiction, infringe a legal provision or constitute an abuse of authority.<sup>181</sup> The Supreme Court has affirmed that where an administrative authority justifies its actions on the basis of some reason which is materially inaccurate or based on an inaccurate interpretation of the law, that decision should be annulled on the basis of breach of authority.<sup>182</sup>

The fairly recent decision of the Supreme Court in *Cameroon Music Corporation (CMC) v Ministry of Culture*<sup>183</sup> demonstrates how its administrative jurisdiction can be exercised to restrict the abuse of power by administrative authorities. The events leading to that case began in 2007 shortly after Mrs Ama Muna was appointed Minister of Arts and Culture in Cameroon. She repeatedly interfered with the Cameroon Music Corporation (CMC), the organisation responsible for regulating copyright and related rights of musical artists in Cameroon. Subsequently, on the basis of incompetent management, she

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<sup>180</sup> Administrative Courts Law, s 2 (3) (a)-(e).

<sup>181</sup> Administrative Courts Law, s 3(a).

<sup>182</sup> *Mbarga Symphorien v Etat du Cameroun*, Judgment No. 29/ CS/CA of 03 May 1990.

<sup>183</sup> *Cameroon Music Corporation (CMC) v Ministry of Culture*, Judgment No. 192/2011/CS/CA of 07 September 2011.



dissolved the board of that organisation and appointed an ad hoc committee with a view towards appointing a permanent board for the CMC. Through a Ministerial Decision, CMC was officially dissolved in May 2008.<sup>184</sup> The ad hoc Committee met on 08 May 2008 and subsequently created *Société Civile Camerounaise de l'Art Musical* (SOCAM) to replace the CMC.<sup>185</sup> In 2008, the CMC challenged the Decision authorising its dissolution in the Administrative Bench of the Supreme Court. The Court sitting at first instance held that the Minister's Decision was not taken in an attempt to maintain public order or security and could cause irreparable damage to the CMC. Consequently, the Court annulled that Ministerial Decision.<sup>186</sup> The Court's decision was appealed by the Minister and on 07 September 2011, the Supreme Court upheld its earlier decision annulling the Ministerial Decision.

Similarly, in *Eglise Presbytérienne du Cameroun* (EPC),<sup>187</sup> the Supreme Court annulled an order issued by the Governor of the Centre Region, prohibiting meetings organised by the General Assembly and Legal Committee of the EPC. The Court held that, the Governor had no authority to issue that order.

The jurisdiction of the administrative courts, is restricted to acts performed by an authority in his capacity as an executive or administrative official. Thus, an action will fail for want of jurisdiction if that criterion is not fulfilled.<sup>188</sup> That does not however preclude that authority from judicial control. What it implies is that, if the acts are described as constituting *voies de fait* ordinary courts such as the High Court can exercise jurisdiction.<sup>189</sup> *Voies de fait* is a doctrine of French administrative law which was first introduced in Cameroon in *Nve Ndong v. Ngaba Victor*<sup>190</sup> and incorporated into the legal order under the 1972 Supreme Court Ordinance.<sup>191</sup> By virtue of that doctrine the

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<sup>184</sup> Minister of Culture, Decision No. 0088/MINCULT/CAB of 12 May 2008.

<sup>185</sup> Minister of Culture, Decision No. 0089/MINCULT/CAB of 15 May 2008.

<sup>186</sup> Ordonnance No. 0341 Ose/CS/CA/2008 of 19 February 2009.

<sup>187</sup> *Eglise Presbytérienne du Cameroun*, Ordonnance No. 02/CS/CA of 26 October 1994.

<sup>188</sup> *Jesco Manga Williams v. Chantier Naval* (2005) 2 CCLR 99.

<sup>189</sup> Administrative Courts Law, s 3(2).

<sup>190</sup> *Nve Ndong v. Ngaba Victor*, Decision of the Full Bench of the Federal Supreme Court No. 10 of 17 October 1968.

<sup>191</sup> Supreme Court Ordinance 1972, s 9(4).

action of an administrative authority can only be challenged in the ordinary courts on the basis that it is so irregular or arbitrary that it loses its administrative character and therefore considered as the personal act of that individual. It is a formidable means by which executive arbitrariness can be curbed in order to protect CPR. This doctrine has been applied by the ordinary courts to attempt to provide redress for executive violations of CPR.<sup>192</sup> Examples of the application of that principle were discussed in Chapters 3 and 4 respectively in *Wakai v The People*<sup>193</sup> and *Sub-Divisional Officer (SDO) Oku v. Shey Ndifon & Oku Rural Radio Association (ORRA)*.<sup>194</sup> In the *Wakai* case, the High Court of Mezam held that the gross violations of CPR committed by administrative authorities could not be described as administrative acts and therefore it had jurisdiction to hear the application for bail made by the victims. Similarly, in *Sub-Divisional Officer (SDO) Oku*, the Bamenda Court of Appeal held the SDO's repeated acts of interference with the Oku Rural Radio to be manifestly arbitrary and that they undermined the ability of the Radio Station to function effectively. The actions therefore lost their administrative character and the SDO was held personally liable for damages caused to the ORRA.<sup>195</sup>

While the scope of administrative review appears sufficiently wide to ensure that administrative authorities are subject to legal limits, as discussed below, other executive officials or acts may be exempt from judicial control.

#### **4.2. Matters Exempt from Review: *Actes de Gouvernement***

By virtue of the doctrine of *actes de gouvernement* (acts of the government), some regulatory instruments emanating from the executive are exempt from review. The law provides that '*Aucune juridiction ne peut connaître des actes de Gouvernement*'.<sup>196</sup>

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<sup>192</sup> *James v. Tchoussongou*, (2001) 1 CCLR 730.

<sup>193</sup> *Wakai & 172 Others v. The People* (1997) 1CCLR 127.

<sup>194</sup> *Sub Divisional Officer (SDO) Oku v. Shey Ndifon & Oku Rural Radio Association*, Suit No. HCB/05M/2003-2004, affd (2005) BCA/17/2005 (unreported).

<sup>195</sup> *Sub Divisional Officer* (n 194)

<sup>196</sup> Administrative Courts Law, s 4. Translated as 'No court shall have jurisdiction over acts of the Government' (author's translation).

The doctrine of *actes de gouvernement* is an ancient French doctrine by virtue of which regulatory measures taken by executive officials such as the President, the Prime Minister and Minister of External Relations are exempt from judicial review.<sup>197</sup> The acts or measures are those taken in the context of the constitutional relationship between the executive and the legislature and the government's foreign or diplomatic relations.<sup>198</sup> Their essential characteristic is that they are politically motivated.<sup>199</sup> The rationale for jurisdictional immunity is the preservation of the state and the maintenance of public order.<sup>200</sup> It follows that, if measures are taken to preserve the state or public order, submitting them to review can have severe consequences.<sup>201</sup> There are no specific measures or acts which fall under that category. The Supreme Court of Cameroon<sup>202</sup> affirming a historical French categorisation has identified some of the measures relating to executive and legislative relations. They include; regulatory measures relating to parliamentary elections, convening of the electoral college prior to legislative elections, convening of Parliament, the introduction of bills in Parliament, requesting a second reading and withdrawal of a bill or failure to introduce a bill.<sup>203</sup>

The Court in a later hearing considered that category incomplete and not specifically reflective of the discretionary powers of the President.<sup>204</sup> The Court held that it did not take into account some powers which have no distinctive legal or political character such as discretionary powers to award damages to victims of terrorism.<sup>205</sup> Other measures which have been identified in the jurisprudence of the Court include the appointment of officials to government and other public institutions<sup>206</sup> and measures taken in the context

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<sup>197</sup> Bell, Boyron & Whittaker (n 35) 179-180; René Chapus, 'L'acte de Gouvernement: Monstre ou Victime?' (1958) *Recueil Dalloz*, Chronique II, 5.

<sup>198</sup> *ibid.*

<sup>199</sup> *ibid.*

<sup>200</sup> Jean de Noel Atemengue, 'Les Actes de Gouvernement Sont-ils une Catégorie Juridique? Discussion Autour de leur Origine Française et de leur Réception Camerounaise' (2000) 12 *African Journal of International and Comparative Law* 144, 149-150.

<sup>201</sup> *ibid.*

<sup>202</sup> *Kouang Guillaume v État du Cameroun*, Judgment No 66 ADD/CS/CA of 31 May 1979 (unreported).

<sup>203</sup> *ibid.*

<sup>204</sup> *Kouang Guillaume v État du Cameroun*, Jugement No 53/CS/CA of 26 June 1980 (unreported).

<sup>205</sup> *ibid.*

<sup>206</sup> *Social Democratic Front (SDF) v État du Cameroun*, Ordonance No. 01/OSE/CCA/CS/2009 (unreported); *Mvogo Jean-Marie v État du Cameroun*, Judgment No. 1203/CS/CA/1999-2000 (unreported).

of the suppression of terrorism.<sup>207</sup> The French *Conseil d'État* has gone much further in identifying areas within the regulatory domain of the President which fall under the category of *actes de gouvernement*. They include measures taken in the exercise of emergency powers,<sup>208</sup> organisation of referendums,<sup>209</sup> dissolution of Parliament,<sup>210</sup> a decision not to submit a law voted by Parliament to the *Conseil Constitutionnel* for constitutional review<sup>211</sup> and the submission of a constitutional amendment bill.<sup>212</sup>

With respect to dissolution and emergency powers which were referred to in Chapter 3,<sup>213</sup> because the Court has not been faced with such scenarios, it remains uncertain what the position is. The powers are inherently political in nature given that they fall within the spectrum of the constitutional relations between the executive and the legislature and are exercised for the preservation of the state and public order. Thus, if the test of their political character is applied and also taking into account the jurisprudence of the French *Conseil d'État* (which the Court has not hesitated to follow)<sup>214</sup> it is possible to speculate that, measures taken in the exercise of those powers will be considered *actes de gouvernement*.

That doctrine can be considered inconsistent with constitutionalism as defined in Chapter 1, because it makes the President and other executive authorities exercising the relevant regulatory powers above the law. According to Léon Duguit, it is inherently authoritarian and arbitrary and provides scope for executive authorities to undermine the rule of law for political or public policy reasons.<sup>215</sup>

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<sup>207</sup> *Société Forestière de la Sanaga v État du Cameroun*, Arrêt No. 5/CFJ/AP of 15 March 1967 (unreported).

<sup>208</sup> CE 02 March 1962, *Rubins de Debans*, (1962) *Revue de Droit Public et de la Science Politique* 288. See also Henri Berthélemy, *Traité Élémentaire de Droit Administratif* (8<sup>th</sup> ed, Paris 1916) 106.

<sup>209</sup> CE 29 April 1970, *Comités des Chômeurs de la Marne et sieur Le Gac*, Recueil Lebon, 279.

<sup>210</sup> CE 20 February 1989, *Allain*, *Revue Française de Droit Administratif* 868.

<sup>211</sup> CE 7 November 2001, No. 237961 *Tabaka*, *Revue de l'Actualité Juridique Française*.

<sup>212</sup> CE 18 July 2008, No. 318567 *Joël M*, *Revue de l'Actualité Juridique Française*.

<sup>213</sup> See ch 3, respectively, s 2.2.3 at 127-128 & s 2.3.2 at 133-136.

<sup>214</sup> Kouang Guillaume (1979) (n 202).

<sup>215</sup> Léon Duguit, *Traité de Droit Constitutionnel III* (3<sup>rd</sup> ed, Ancienne Librairie Fontemoing 1930) 736-738.

As discussed in Chapter 3, the President is vested with extensive regulatory powers which have been exercised to circumscribe some CPR and institutions such as ELECAM charged with the responsibility of overseeing the exercise of other rights. Moreover, unlike the clearly defined scope of the legislative competence of Parliament, the legislative scope of the President is indeterminate such that he can assume competence over every aspect which is not under Parliament's responsibility. Given the depth of those powers it is important that some oversight mechanism is available to regulate their effective exercise to ensure that decree powers are not used arbitrarily. The absence of a mechanism to review such acts further undermines the checks and balances system. It also threatens the effective protection of CPR to the extent that there is scope for the issuing of oppressive decrees and their continuous application without challenge. A fairly recent decision of the Court demonstrates that possibility.

In *Social Democratic Front v État du Cameroun*<sup>216</sup> the main opposition party (SDF) petitioned the Supreme Court to declare null and void the 2008 presidential decree appointing ELECAM members.<sup>217</sup> The petitioner argued that the appointment of members of the ruling CPDM party to that institution contradicted the incompatibility, neutrality and impartiality safeguards provided in sections 11 and 13 of the ELECAM Law. The Court held that, the decree in question was issued by the President pursuant to the exercise of his regulatory powers. So, the decree constituted an act of the government for which no court was vested with powers of review.<sup>218</sup> As a result, the petition was dismissed.<sup>219</sup>

That decision is disappointing because, as discussed in Chapter 3, one of the weaknesses of ELECAM which undermines its ability to ensure the conduct of free and fair elections is its lack of independence.<sup>220</sup> Had the decision of the President been subject to review, it

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<sup>216</sup> *Social Democratic Front (SDF) v État du Cameroun*, Ordonance No. 01/OSE/CCA/CS/2009 (unreported).

<sup>217</sup> Decree No. 2008/463 of 30 December 2008. Discussed in ch 3 at 119-120.

<sup>218</sup> *SDF* (n 216), 4-5.

<sup>219</sup> *ibid* 6. A similar decision was arrived at in *Mvogo Jean-Marie v État du Cameroun*, Judgment No. 1203/CS/CA/1999-2000 (unreported) where a presidential decree appointing a consular officer was held to be an act of the government, which could not be subject to judicial review.

<sup>220</sup> See ch 3 at 119-120.

would have been possible to envisage the reappointment of more objective members without any political affiliation, who could contribute positively to establishing a more transparent and fair electoral system.

Although the Cameroonian system is influenced by the French civil law system, in France however, due in part to judicial activism, some regulatory acts emanating from the executive can be challenged in the *Conseil d'État* and the *Cour de Cassation* where they adversely affect the exercise of fundamental rights.<sup>221</sup> These courts have ascribed to themselves jurisdiction to review the conformity of regulatory acts with a series of general principles of law known as *principes généraux du droit*.<sup>222</sup> The fundamental principles of human rights emanating from the *bloc de constitutionnalité* (consisting of 1789 Declaration of the Rights of Man and the Preambles to the 1946 and 1958 Constitutions) are considered general principles of law on the basis of which executive legislation breaching human rights could be challenged.<sup>223</sup>

International standards also require that executive decrees be subject to review as a means of enhancing the protection of CPR. This issue was addressed in *Civil Liberties Organisation v. Nigeria*,<sup>224</sup> a complaint made to the African Commission for breach of the right to have one's cause heard, guaranteed under Article 7(1) of the African Charter on Human and Peoples' Rights. The complaint originated from events in Nigeria during which the Nigerian Military government in pursuance of a practice established by previous military governments<sup>225</sup> promulgated a decree prohibiting judicial review. The effect was that the validity of decrees promulgated between 31<sup>st</sup> December 1983 and 26<sup>th</sup> August 1993 and thereafter could not be challenged in court even where they violated fundamental rights. The complainant argued *inter alia* that the decree amounted to a

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<sup>221</sup> Brown & Bell (n 177) 219-220; Rogoff (n 58) 75-78.

<sup>222</sup> *ibid.* See also CE Sect., 26 June 1959; *Cafés Jacques Vabre* (n 139).

<sup>223</sup> Brown & Bell (n 177) 219-220; Rogoff (n 58) 75-78.

<sup>224</sup> *Civil Liberties Organization v. Nigeria* ACHPR Communication No. 129/94 (1995).

<sup>225</sup> That principle was established by the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970 as a reaction to the Supreme Court's decision in *Lakanmi v. Attorney-General* [1971] U. Ife. L.R. 201 discussed in Tunde Ogowewo, 'Why the Judicial Annulment of the Constitution of 1999 is Imperative for the Survival of Nigeria's Democracy' (2000) 44 *Journal of African Law* 135, 151-153.

threat on judicial independence and a breach of article 26 of the African Charter. Article 26 provides that states have the duty to guarantee the independence of the judiciary and allow the establishment and improvement of appropriate national institutions entrusted with the protection and promotion of the rights and freedoms guaranteed by the Charter. The African Commission firmly condemned the Nigerian government and described the prohibition as an ‘invidious attack on human rights’.

The exemption of certain regulatory acts from judicial control constitutes a weakness in the framework for the protection of CPR. As seen in the *SDF* case,<sup>226</sup> that exemption can provide scope for regulatory acts to inhibit the effective enforcement of CPR.

#### **4.3. Some Problems Associated with the Administrative Review Mechanism**

Although the delimitation of administrative jurisdiction may have the advantage of easing the work load of ordinary courts, that system has a number of disadvantages in Cameroon that undermine the effective protection and enhancement of CPR.

Firstly, the administrative courts like ordinary courts are subjected to extensive executive control. As such, they face similar problems of lack of autonomy and power which undermine the extent to which they can curtail the arbitrary exercise of power by administrative authorities. In the *Cameroon Music Corporation* (CMC) case discussed earlier, the Minister of Arts and Culture failed to respect the initial decision of the Court and has continued to show contempt by flouting the decision delivered in September 2011.<sup>227</sup> SOCAM has not been dissolved and it continues to operate thereby undermining the effective operation of the CMC which should have been reinstated following the decision of the Court.<sup>228</sup> In a Ministerial correspondence addressed to the President of the *Société des Autuers, Compositeurs et Editeurs de Musique* (SACEM Paris) on 12 July 2012, the Minister informed the latter organisation that CMC had been effectively

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<sup>226</sup> Text to (n 183) above.

<sup>227</sup> Sylvain Andzong, ‘Justice: Ces Ministres Qui Défient la Cour Suprême’ (Yaoundé, 24 October 2012) <[www.cameroon-infonet/stories/0,38449@justice-ces-ministres-qui-defient-la-cour-supreme.html](http://www.cameroon-infonet/stories/0,38449@justice-ces-ministres-qui-defient-la-cour-supreme.html)> accessed 02 November 2012; *Le Messenger* No. 3635 of 16 July 2012.

<sup>228</sup> *ibid.*

dissolved.<sup>229</sup> She also indicated that any further cooperation with the industry in Cameroon should be carried out through SOCAM.<sup>230</sup> This is clearly a flagrant contempt of Court and no further action has been taken to ensure that the Minister executes that decision.

Secondly, the effectiveness of administrative review is undermined by difficulties relating to physical access to the Supreme Court. The Court is situated in Yaoundé the capital city of Cameroon.<sup>231</sup> Geographically, Yaoundé is far removed from most parts of the country and there are cost implications which may deter an ordinary citizen with little financial means. Moreover, the transportation system is problematic in terms of the road networks which also tend to exacerbate the problem of cost.<sup>232</sup> In those circumstances, an ordinary citizen is unlikely to have the capacity to make such financial commitments due in part to high levels of poverty.<sup>233</sup> Hopefully, this problem would be resolved when the Lower Administrative Courts become functional.

Thirdly, the effectiveness of the Court is impeded by excessive delays due in part to the diverse jurisdiction of the Court in the areas already mentioned.<sup>234</sup> Examples of delays in that Court have amounted to twelve, seven and four years respectively.<sup>235</sup> The African Commission in *Association of Victims of Post Electoral Violence & INTERIGHTS v*

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<sup>229</sup> Correspondence No. 1582/L/MINAC/SG of 17 July 2012 reproduced in Andzong (n 227).

<sup>230</sup> *ibid.*

<sup>231</sup> As opposed to the single Supreme Court, ordinary courts which include Courts of First Instance, High Courts and Courts of Appeal are represented at the local levels (sub-divisional, divisional and regional).

<sup>232</sup> Mike Yanou discusses the difficulties faced by some communities in the South West Region who, due to poor road infrastructure have to travel through neighboring Nigeria to get to Yaoundé. Mike Yanou, 'The Local Courts, Decentralisation and Good Governance: The Case of the English Speaking Provinces of Cameroon' (2009) 13(5) *The International Journal of Human Rights* 689, 694. See also Laurent-Roger Ngimbog, 'La Justice Administrative à L'Épreuve du Phénomène de la Corruption au Cameroun' *Droit et Société* (2002)2 (51-52) 301, 306.

<sup>233</sup> Yanou (n 232) 694; Ngimbog (n 232) 306. Transportation to and from Yaoundé can cost as much as 20.000 CFA excluding other costs related to living expenses and legal representation. Confronted with the possibility of deducting over 20.000 CFA from a salary of about 100.000 CFA (see n 49 above) and faced with a high probability of losing the case, a litigant may be dissuaded from pursuing an administrative authority.

<sup>234</sup> Ngimbog (n 232) 306; Fombad, 'Protecting Constitutional Values' (n 45)101.

<sup>235</sup> *Emnga Mekongho v Cameroon*, Communication No. 59/91; *AVEV & INTERIGHTS v Cameroon*, Communication 272/2003, ACHPR 27<sup>th</sup> Activity Report; *Abdoulaye Mazou v Cameroon*, Communication No. 630/1995, CCPR/C/72/D/630/1995.



Cameroon,<sup>236</sup> condemned the practice of excessive delay in the Administrative Bench of the Supreme Court. In that case, the complainants alleged to have suffered destruction of private property and physical injuries from the events that occurred after the declaration of the results of the 1992 Presidential election.<sup>237</sup> They alleged that, the government had failed to take adequate measures to prevent the violence that erupted and to protect their physical integrity. In March 1998 the complainants initiated proceedings against the government for compensation. However, the Supreme Court failed to acknowledge receipt of their petition despite several attempts by the complainants to get the matter resolved by that Court. The matter remained pending until 2003 when the complainants brought their action to the African Commission. The Commission held inter alia that, the delay of over five years constituted a breach of article 7(1) (d) of the African Charter which guarantees the right to be tried within a reasonable time by an impartial court or tribunal.<sup>238</sup>

Fourthly, the procedures before the administrative bench are quite complex and often result in a matter being inadmissible or rejected on technical grounds.<sup>239</sup> A notable procedure is that of the exhaustion of internal remedies which requires that a complaint be lodged first with the administrative authority in question before seizing the Supreme Court.<sup>240</sup> That requirement is fundamental to the admissibility of a petition and the failure to observe that procedure will result in inadmissibility.<sup>241</sup> The requirement is particularly disadvantageous to an ordinary citizen because there is a general culture of lack of

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<sup>236</sup> *Association of Victims of Post Electoral Violence & INTERIGHTS v. Cameroon*, Communication No. 272/2003, 11- 25 November 2009.

<sup>237</sup> See chs 2 & 3 at 99 & 137-138 respectively.

<sup>238</sup> *Association of Victims of Post Electoral Violence* (n 236) para 127. See also *Pierre Désiré Engo v Cameroon*, Communication No. 1397/2005 CCPR/C/96/D/1397/2005, where there was a period of eight years delay before a final judgment was delivered against the complainant by the Mfoundi Court of Appeal or the Supreme Court.

<sup>239</sup> Ngimbog (n 232) 306.

<sup>240</sup> Administrative Courts Law, s 17. See also Tchawouo Mbiada, 'The Exhaustion of Internal Remedies in Administrative Law: A Comparative Analysis of the South African and Cameroonian Requirements and Procedure' (2012) 20(1) *African Journal of International and Comparative Law* 119.

<sup>241</sup> *Social Democratic Front* (n 216); *A. M. Feyou de Happy v Rep of Cameroon* Judgement No. 103 CS/CA of 30 May 1991.

cooperation from administrative authorities<sup>242</sup> and poor administration which obviates against efficient record keeping.<sup>243</sup> For those reasons administrative authorities tend to fail to respond to complaints made to them or when they do, the lack of efficient record keeping implies that the complainant would have little access to the required documentation to eventually follow up the complaint or commence proceedings in the Court. In the absence of the relevant documentation and failure to exhaust internal remedies, a petition to the Court is likely to be inadmissible on matters of technicality.

This was the position in *A. M. Feyou de Happy v Republic of Cameroon* where a petition was declared inadmissible due to the failure to exhaust internal remedies.<sup>244</sup> That provision can only be dispensed with in the event of a failure of the administrative authority to respond four years after the claim was made known to it.<sup>245</sup> Four years is an excessively long period which in terms of CPR enforcement, may only perpetuate the violation that was caused by the administrative act or may cause other violations. That procedure and the time limit provision are unnecessary and mandate costly delays. A fundamental element underlying some rights such as the rights to personal liberty, fair trial and access to justice is the time factor. Complexities and delays of this nature are obstacles which are inclined to breach time restrictions thereby perpetuating violations.

The cumulative effect of those obstacles is the restriction of access to justice and therefore a denial of justice to an ordinary litigant.<sup>246</sup> Faced with such obstacles, an ordinary citizen may be dissuaded from seeking redress for the violation of their rights by an administrative authority.<sup>247</sup> While the system of administrative review provides scope for the control of administrative authorities, it does not sufficiently guarantee the protection of ordinary citizens from executive violations of CPR.

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<sup>242</sup> Citizen's Governance Initiative (CGI), 'The Right to Information and Administrative Transparency in Cameroon' (Yaoundé, Imprimerie Saint Paul 2010) 21, 75-77, which discusses the culture of administrative unresponsiveness to the general public. See also the Introduction to this thesis at 14 -16.

<sup>243</sup> Mbiada (n 240) 130; Ngimbog (n 232) 306. See also the Introduction to this thesis at 14 -16.

<sup>244</sup> *A. M. Feyou de Happy* (n 241).

<sup>245</sup> Administrative Courts Law, s 17(3). See also *Libam Kouang v Cameroon*, Judgement No. 8CS/CA of 25 November 1976 cited in Mbiada (n 240) 125.

<sup>246</sup> Mbiada (n 240) 131.

<sup>247</sup> Ngimbog (n 232) 306; Fombad, 'Protecting Constitutional Values' (n 45)101.

## CONCLUSION

This chapter has discussed the different mechanisms for judicial review in Cameroon and demonstrated some of their weaknesses. It has shown that, the mechanisms adopted under the 1996 Constitution have continued to be influenced by the French colonial heritage even though they do not provide scope for the effective protection and enhancement of CPR.

The effectiveness of constitutional review is undermined in particular, by the limited scope of review and standing. The law does not provide scope for the review of enacted laws. This has made it possible for the continued application of some rights-infringing provisions of the law such as the Penal Code. Moreover, only an extremely limited category of officials in the country have standing to apply for review. As a consequence, an effective practice of constitutional review is largely absent. Other problems relating to the institutional structure of the Constitutional Council and the lack of independence of the judiciary further diminish the effectiveness of the system. The absence of an effective practice undermines the potential for constitutional review to contribute to a more robust system for the protection and enhancement of CPR in Cameroon.

For its part, conventional review appears to be an avenue which can provide a useful means of ensuring that domestic legislation provides adequate protection for CPR. However, being largely unexploited in Cameroon, its potentials have not been realised. Certainly, conventional review cannot completely fill the gap created by the absence of post-legislative constitutional review. However, in the absence of the latter, conventional review assumes more significance as an alternative avenue through which ordinary citizens can challenge the application of rights-infringing legislative provisions.

With respect to administrative review, although the law provides for a system to limit the arbitrary exercise of power by executive and administrative authorities, its effectiveness is undermined by a number of problems. Firstly, the wider problem of lack of judicial independence limits the capacity of the Supreme Court to effectively sanction executive

violations of CPR. Secondly, the problem of physical access to the Supreme Court makes it problematic for ordinary Cameroonians residing out of Yaoundé to view administrative review as a viable option to seek redress for executive violation of CPR. Thirdly, the practice of excessive delay in the Supreme Court tends to undermine access to justice for ordinary Cameroonians. Fourthly, due to complex court procedures, the prospects of successfully pursuing a claim against an administrative authority may be so illusive as to dissuade a victim of CPR violations from seeking redress in the Supreme Court. Finally, the exclusion of *actes de gouvernement* from administrative review undermines the effectiveness of the checks and balances system. Through that practice, some executive officials and in particular, the President, who exercises considerable regulatory powers, appears to be above the rule of law.

In the light of the inadequacies in Cameroon's constitutional framework for the protection of CPR discussed in this chapter and the entire thesis thus far, the question then is; how can the constitutional system be enhanced to secure a more effective protection and enhancement of CPR? The next chapter attempts to answer that question.

## **Chapter 6**

### **An Alternative Paradigm for Constitutionalism and Civil and Political Rights in Cameroon: The ‘Optimal Integrative Approach’**

#### **INTRODUCTION**

In Chapter 1, the basic elements of constitutionalism were presented as a framework to analyse the Cameroonian system. The point was also made that context was an important consideration in the development and application of those principles. Chapter 2 discussed the constitutional history of Cameroon and how it came to adopt a model of constitutionalism significantly influenced by its French colonial heritage. Chapters 3 to 5 have demonstrated how the basic features of constitutionalism inherent in that system have been inadequately conceptualised to the point that their value as institutional features that can enhance the protection and promotion of civil and political rights (CPR) are considerably diminished. That model is weak both in terms of its constitutional conceptualisation and in its application in Cameroon.

This chapter attempts to address that dual level of limitation by advocating for a contextualisation of constitutionalism in a bid to develop potentially robust institutional features that can more effectively contribute to the protection and enhancement of CPR. The aims are twofold. The first is to demonstrate exemplars of positive values embedded in the normative orders existing in Cameroon, which can be influential in contextualising constitutionalism. Secondly, the chapter aims to introduce an alternative paradigm for developing that contextualised approach by utilising some of the positive values identified.

Recent literature on constitutionalism in Africa suggests the viability of contextualisation in seeking solutions that are relevant to the resolution of Africa’s CPR deficit (amongst other problems). There appears to be fairly broad consensus in the literature that one way to achieve contextual solutions is to revisit indigenous philosophies, concepts, institutions and mechanisms for governance and to evaluate their potential to contribute to the

modern features of constitutionalism. Drawing on this literature and against the backdrop of Cameroon's CPR problems already exposed throughout this thesis, this chapter resorts to what is referred to here as the 'Optimal Integrative Approach' (OIA). The OIA is an approach to constitutional engineering which seeks to take the focus away from the excessive reliance on the French colonial legacy to explore innovative avenues that recognise the positive attributes of the other normative orders that have been largely undermined in the development of constitutionalism in Cameroon.<sup>1</sup>

OIA is not presented here as a fully developed and refined theoretical framework, however. The discussion in this chapter is a preliminary but necessary step towards developing that framework for addressing the CPR problems examined in the previous chapters. Further research will be required into the intricacies of indigenous customs and the specific ways of integrating diverse constitutional features from the different legal traditions in Cameroon. Moreover, considerably more space than is available in this chapter would be necessary. Such a task must therefore be left to future work.

The analysis in the chapter is divided into three major sections. Section one looks briefly into the literature on constitutionalism in Africa. A synopsis of that literature was presented in Chapter 1 of this thesis. This section builds on that discussion to provide support for the proposition that contextualising constitutionalism in Cameroon is important. Section two begins to examine the idea of contextualisation by reviewing existing debates on the positive features of the British colonial heritage and indigenous customs and traditions that can contribute to reinforce the constitutional framework for CPR enforcement. In section three, the meaning of the OIA is discussed with some suppositions that are seen here as underlying the success of constitutional engineering

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<sup>1</sup> For a similar view on Multilevel Constitutionalism and the components of the European Constitution see, Ingolf Pernice, 'Multilevel Constitutionalism in the European Union'. Available at <<http://whi-berlin.de/documents/whi-paper0502.pdf>> accessed on 30 May 2013. See also Richard Falk et al, for views on the prospects for a new global constitutional order. Richard Falk et al, 'Global Constitutionalism and World Order'. Available at <<http://www.sunypress.edu/pdf/52633.pdf>> accessed on 30 May 2013.

based on OIA. The chapter concludes with a summation of the discussion in the preceding sections.

## 1. CONTEXTUALISING CONSTITUTIONALISM IN AFRICA

The search for an alternative paradigm for CPR enforcement in Cameroon is not an isolated quest in the struggle for constitutional government and better rights protection in Africa.<sup>2</sup> For some scholars of constitutionalism in Africa, features of the Western models are simply not sufficiently robust to deal with Africa's specific problems which include massive violations of CPR. As such, they advocate the need for the contextualisation of constitutionalism as a solution to enhancing the potential of that concept to deal with the problems faced.

That quest for contextualisation in Africa is not premised on an ambitious notion that Western constitutionalism is irrelevant. African societies still need a system of government where power is organised in a way that enhances the realisation of CPR (among other objectives). Nonetheless, a persistent view expressed is that Western constitutional concepts can be enhanced by relying on indigenous elements which resonate more within the African context and reflect its distinctive experiences.<sup>3</sup> Ali Mazrui for one contends that the success of constitutionalism in Africa is predicated on 'consultation with traditional culture, custom and legal precedents' which have the potential of enriching constitutional engineering.<sup>4</sup> He argues, for instance, that the Baganda community in Uganda has been able to advance its interests by the capacity to synthesise indigenous approaches with Western models of governance.<sup>5</sup> For Mazrui, such a process should provide a guide to constitutional engineers in Africa when determining

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<sup>2</sup> See ch 1, s 2.3 at 30-32.

<sup>3</sup> Hastings W.O. Okoth-Ogendo, 'Constitutionalism without Constitutions: The Challenge of Reconstruction of the State in Africa', in Carla Zoethout & Piet Boon, *Constitutionalism in Africa: A Quest for Autochthonous Principles* (Sanders Institute: GQ-D 1996) 49-62; Ali Mazrui, 'Constitutional Change and Cultural Engineering: Africa's Search for New Directions' in Joseph Oloka-Onyango *Constitutionalism in Africa: Creating Opportunities Facing Challenges* (Fountain Publishers 2001) 20-21; Richard Sklar, 'On the Study of Constitutional Government in Africa' in Okon Akiba, (ed), *Constitutionalism and Society in Africa* (Ashgate 2004) 46-49.

<sup>4</sup> Mazrui (n 3) 20-21.

<sup>5</sup> *ibid* 21, 35.

questions on how indigenous communities responded to issues of power and governance prior to colonialism.<sup>6</sup> That background can possibly enrich the prospective development of constitutional institutions whatever model of Western constitutionalism is adapted. However, Mazrui fails to demonstrate the practical mechanisms through which the Baganda community were able to achieve that process of contextualisation. Thus, although he echoes the need for contextualisation he does not go far enough to demonstrate how that may be achieved in practice.

Abdullahi An-Na'im makes a similar argument with regards to contextualising constitutionalism in Africa. He asserts that the Western notion of constitutionalism is not an unassailable and timeless concept which can be applied universally at all times without specific contextual adaptations.<sup>7</sup> Western concepts of constitutionalism may still be appropriate through a process he calls the 'dialectic of constitutionalism in Africa'.<sup>8</sup> He describes this as a process whereby the principles of constitutionalism progress from a state of abstraction to 'the adaptation and indigenisation of the concept or principles to local conditions and context'.<sup>9</sup> Such a process draws on indigenous and pre-colonial traditions of social, political and cultural thought and practices to provide an inclusive and contextually relevant conceptualisation of constitutionalism.<sup>10</sup> That approach does not presuppose the existence of 'an original, virgin African constitutionalism' but emphasises the existence of pre-colonial antecedents which can provide guidance in the synthesis project.<sup>11</sup>

A challenge for this approach is the difficulty of identifying what indigenous institutions are likely to advance constitutionalism given the heterogeneous nature of African culture. An-Na'im suggests that such a process again should be contextual as one approach that applies to a given African society may not be appropriate for another.<sup>12</sup> Nevertheless, An-

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<sup>6</sup> ibid 20.

<sup>7</sup> Abdullah A. An-Na'im, *African Constitutionalism and the Role of Islam* (University of Pennsylvania Press 2006) 31.

<sup>8</sup> ibid ix.

<sup>9</sup> ibid.

<sup>10</sup> ibid 27-28, 31

<sup>11</sup> ibid 32

<sup>12</sup> ibid 31.



Na'im and Francis Deng attempt to illustrate an example of a relevant indigenous philosophy of the Ashanti in Ghana.<sup>13</sup> They refer to the philosophy of decision making by consensus,<sup>14</sup> relying substantially on Kwasi Wiredu's account of that philosophy.<sup>15</sup> Both authors assert that, in the Ashanti community, the village councils which represented various clans provided avenues for popular participation. Although a chief headed such councils, they had no overriding influence on the deliberation or decision making process.<sup>16</sup> The representatives for different clans were provided the opportunities to articulate their opinion on matters relating to themselves, their clan and the community as a whole and to express reservations on aspects which in their view did not accord well with the interests they represented.<sup>17</sup> Because each representative was accorded that opportunity, it enhanced representation and participation.<sup>18</sup> That also enhanced the ability to reach decisions that were generally accepted.

Consensus did not imply that differences were not respected. However, the process of dialogue enhanced the understanding of differing perspectives and the ability to negotiate and attain an outcome which was acceptable to all.<sup>19</sup> Echoing Wiredu's reservations, An-Na'im recognises that that philosophy cannot be idealised as some features (such as the kinship network) which provided a basis for its operation cannot be sufficiently relied upon in contemporary Africa.<sup>20</sup> Therefore, it should not be adopted uncritically.<sup>21</sup> However, in terms of its influence on contextualising constitutionalism, both authors assert that governance institutions based on some aspects underlying that philosophy can promote popular participation in governance and decision making.<sup>22</sup> Popular participation

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<sup>13</sup> The Ashanti are a subgroup of the Akan ethnic group in Ghana. Francis Deng, *Identity, Diversity and Constitutionalism in Africa* (USIP 2008) 88.

<sup>14</sup> An-Na'im (n 7) 35-38; Deng (n 13) 88-90.

<sup>15</sup> Kwasi Wiredu, 'Democracy and Consensus in African Traditional Politics: A Plea for a Non-party Polity' in Emmanuel Eze (ed) *Postcolonial African Philosophy: A Critical Reader* (Blackwell Publishers 1997).

<sup>16</sup> An-Na'im (n 7) 36-37; Deng (n 13) 88.

<sup>17</sup> Deng (n 13) 88-89.

<sup>18</sup> An-Na'im (n 7) 36; Deng (n 13) 88-89.

<sup>19</sup> *ibid.*

<sup>20</sup> An-Na'im (n 7) 36.

<sup>21</sup> *ibid.*

<sup>22</sup> An-Na'im (n 7) 37; Deng (n 13) 89-90.

can also enhance the capacity for people to hold their governments to account.<sup>23</sup> In addition, it can provide scope for the representation of minorities that are often neglected by contemporary forms of majoritarian politics.<sup>24</sup>

An-Na'im and Deng, however, do not go far enough to demonstrate how that philosophy can be applied in practice. There is no indication as to what form such a system might take or at what level of governance (local or national) the application of that philosophy would be relevant. Thus, while the idea of developing contextually relevant constitutional structures may have a general appeal, the absence of concrete examples of contextual models makes it difficult to appreciate the difference that they can make. That lacuna is perhaps why some reservation has been expressed about the contextualisation of constitutionalism.

Carla Zoethout et al for instance, view constitutionalism as essentially a universal concept which can be applicable in Western liberal or democratic societies as well as those without a liberal tradition.<sup>25</sup> They assert that:

[T]he 'force' of constitutionalism is that the values and notions it incorporates are - so to say - transcendental. They are beyond time and place; the elements ... are not related to a specific culture or situation, but they can – in practice – be enforced anywhere.<sup>26</sup>

Two observations can be made here. Firstly, Zoethout et al's assertions can be accommodated to the extent that they perceive the ideal of limited government, respect for the rule of law and fundamental rights as a universal project to which all societies should aspire. This point is underscored by most of the African scholars reviewed above who revere the values of constitutionalism as providing a framework that is more

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<sup>23</sup> Deng (n 13) 90.

<sup>24</sup> An-Na'im (n 7) 37; Deng (n 13) 89-90.

<sup>25</sup> Carla Zoethout & Piet Boon, 'Defining Constitutionalism and Democracy: An Introduction' in Zoethout & Boon, *Constitutionalism in Africa: A Quest for Autochthonous Principles* (Sanders Institute: GQ-D 1996) 15.

<sup>26</sup> *ibid.*

conducive to rights enforcement. The second observation is that beyond that perspective, the views of Zoethout et al can be considered too idealistic in the sense that they assume a universal accommodative potential of all societies. They fail to recognise that beyond the universally accepted principles, there are specific features within each society which can influence the development of constitutionalism. Even within the three major Western models (French, Anglo-American and British) the values and elements of constitutionalism have a common identification but have been articulated to reflect the specific historical developments and traditions peculiar to these countries.

With respect to Africa, Maurice Kamto and Alain Moyrand make the point that contemporary African societies are caught between modernity and tradition.<sup>27</sup> They argue that although Western models cannot be privileged to the exclusion of tradition, traditional practices cannot wholly regulate society in their contemporary forms.<sup>28</sup> An important step in enhancing constitutionalism would be to invest efforts in identifying those indigenous features which together with Western conceptions can advance constitutional engineering in Africa.<sup>29</sup> According to Deng, African societies are now straddled between Western and ‘not so purely’ traditional African philosophies.<sup>30</sup> Therefore, ‘[t]he task that lies ahead is to find a way to synthesise these different perspectives to find common or at least complementary ground to give greater expression to... the cultural principles and norms that govern [African] people’.<sup>31</sup>

With regards to Cameroon, the OIA is an attempt to develop a framework for contextualising constitutionalism by synthesising relevant features of the inherited models with indigenous antecedents. The next section discusses some of those features that can be applied in the context of Cameroon.

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<sup>27</sup> Alain Moyrand, ‘Réflexion sur L’Introduction de l’Etat de droit en Afrique Noire Francophone’ (1991) 43(4) *Revue Internationale de Droit Comparé* 853, 877-878; Maurice Kamto, ‘Une Justice entre Tradition et Mordenité’ in Gérard Conac & Jean Du Bois De Gaudusson (eds) *La Justice en Afrique* (Afrique Contemporaine, n° (spécial) 156, La Documentation Française 1990) 64.

<sup>28</sup> *ibid.*

<sup>29</sup> *ibid.*

<sup>30</sup> Deng (n 13) 77.

<sup>31</sup> *ibid* 83.

## 2. CONTEXTUALISING CONSTITUTIONALISM IN CAMEROON

This section will discuss the idea of contextualising constitutionalism in Cameroon by evoking its legally pluralistic nature as a context within which CPR are enforced. The view of legal pluralism adopted here is that described by Gordon Woodman as a ‘state of affairs in which a category of social relations is within the fields of operation of two or more bodies of legal norms’.<sup>32</sup> He distinguishes between ‘deep legal pluralism’ and ‘state law pluralism’, the former being a situation of coexistence of state law and customary law while the latter refers to the recognition and incorporation of customary law in the state legal system. Cameroon appears to fit within these two categories in the sense that customary law coexists with state law (received common and civil law) and has received some recognition in statute.<sup>33</sup>

As was demonstrated in Chapter 2, during the colonial era, traditional custom, the common law and civil law applied in Cameroon in the respective colonial territories although the influence of traditional custom had already begun to wane. At independence and after reunification, further constitutional developments saw the gradual erosion of the influence of traditional customs and institutions and the British colonial legacy. Yet, as this section will attempt to demonstrate, those two systems possess features that can be influential in enhancing constitutionalism in Cameroon. With regards to traditional customs and institutions, it is acknowledged that their integration at the national level can be difficult to envisage. As will be argued below, they can be more useful at the local levels to encourage local participation in governance and in so doing empower people to hold governmental authorities to account. However, that is not to say that some aspects of the indigenous systems cannot be envisaged at the national level.

In terms of the two Western influences, there is reason to presume that even though they are colonial impositions, they should not be jettisoned in their totality. The purpose of contextualisation is not just about breaking with the predicament of the past, but equally

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<sup>32</sup> See Gordon Woodman, ‘Legal Pluralism and the Search for Justice’ (1996) 40(2) *Journal of African Law* 152, 157-158.

<sup>33</sup> The extent to which customary law is applicable is discussed later in the chapter.

seeking better solutions for the realisation of CPR now and for the future. If the latter can be achieved more favourably by reforming what is already in place, is known and assumed by the people, then there is some value in looking more into the colonial legacy. This should not be seen as being paradoxically trapped by that legacy. Rather, another form of resistance occurs by rejecting what is divisive and selectively adopting and modifying those features that can be more productive in the realisation of CPR in Cameroon. That option of making selective choices is conceivably a mark of independence which deviates from the current position of being trapped in the excessive reliance on the French colonial legacy.

The discussion in the next two subsections will begin to look into contextualisation in Cameroon in greater detail.

## **2.1. Constitutionalism and the British and French Colonial Legacy**

Despite the disappointment with Western models of constitutionalism in Africa, it has been argued from a comparative perspective that the British colonial legacy is more supportive of constitutionalism and British colonies have better records in the protection of CPR<sup>34</sup> than former French colonies.<sup>35</sup> The arguments have focused on the institutional features of constitutionalism such as separation of powers, checks and balances, judicial independence and constitutional review. In all three areas, the British colonial legacy is said to be more in congruence with constitutionalism than the French. Although the arguments have sometimes been overstated, they do suggest a need for further examination.

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<sup>34</sup> The literature in this debate has interchangeably referred to human rights and CPR.

<sup>35</sup> Frank Moderne, 'Human Rights and Postcolonial Constitutions in Sub-Saharan Africa' in Louis Henkin & Albert Rosenthal (eds), *Constitutionalism and Rights: the Influence of the United States Constitution Abroad* (Columbia University Press 1990); Sandra F. Joireman, 'Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy' (2001) 39(4) *Journal of Modern African Studies* 571, 573-4; Larry Diamond & Marc Plattner, 'Francophone Africa in Flux' (2001) 12(3) *Journal of Democracy* 35; Edward L. Glaeser and Andrei Shleifer, 'Legal Origins' (2002) *Quarterly Journal of Economics* 1193, 1224; Sandra F. Joireman, 'Colonisation and the Rule of Law: Comparing the Effectiveness of Common Law and Civil Law Countries' (2004) 15 *Constitutional Political Economy* 315. See also Rafael La Porta et al, 'The Quality of Government' (1999) 15 *Journal of Law, Economics and Organisation* 222; Rafael La Porta et al, 'The Economic Consequences of Legal Origins' (2008) 46(2) *Journal of Economic Literature* 287, 298.

First, there is evidence to suggest that judicial independence is a distinct value associated with the common law system.<sup>36</sup> In post-colonial Africa, it has been particularly advanced as a heritage that has contributed to more effective protection of CPR in former British colonies.<sup>37</sup> Henry Carey et al for instance conducted empirical investigations into the correlation between judicial independence, levels of freedom and the British colonial influence. The examination was conducted using a time series cross sectional approach involving 123 countries from 1992 through 1999 relying on data provided by Freedom House.<sup>38</sup> Freedom was expressed in terms of CPR which included freedom of opinion, expression, and association, participation in the political process, personal liberty and universal suffrage. With regards to judicial independence, evaluation was partially based on textual (constitutional) provisions focusing on variables such as institutional and personal autonomy, insulation from external influences and de facto judicial independence.<sup>39</sup> The latter variable (de facto independence) was assessed with reliance on the U. S. State Department's annual human rights reports and annual reports from Amnesty International and Human Rights Watch.<sup>40</sup>

Three important observations were made. Firstly, judicial independence was seen to have a positive effect on political freedoms and civil liberties. Secondly, the British colonial influence increased the level of political freedom and civil liberties.<sup>41</sup> Thirdly, a strong correlation was found to exist between British colonial influences and judicial

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<sup>36</sup> A. V. Dicey, *Introduction to the Study of Law* (6<sup>th</sup> ed, Macmillan & Co. 1902) 197; Maurice Vile, *Constitutionalism and the Separation of Power* (Clarendon Press 1967) 89; Anthony W. Bradley, 'The Constitutional Position of the Judiciary' in David Feldman (ed) *Public Law* (Oxford University Press 2004) 333, 339-350; Rafael La Porta et al, 'Judicial Checks and Balances' (2004) 112(2) *Journal of Political Economy* 445, 449. See also Lord Atkin in *Eshugabi Eleko v. Government of Nigeria* [1931] AC 662, 670, who affirmed that it was in accordance with British jurisprudence that the executive did not interfere with the judiciary and that the latter did not shrink from adjudicating fairly in the face of the executive.

<sup>37</sup> Henry F. Carey, 'The Postcolonial State and the Protection of Human Rights' (2002)22 *Comparative Study of. South Asia, Africa & Middle East* 59, 63; Henry F. Carey and Robert H. Howard, 'Independent Judiciaries and Democratic Rule' (Annual meeting of the American Political Science Association, Boston, 2002); La Porta et al, 'The Economic Consequences of Legal Origins' (n 35); La Porta et al 'Judicial Checks and Balances' (n 36) 448, 452-453; Charles Fombad, 'A Preliminary Assessment of the Prospects for Judicial Independence in post-1990 African Constitutions' (2007) *Public Law* 233, 253.

<sup>38</sup> Carey & Howard (n 37) 2, 3, 7.

<sup>39</sup> *ibid* 8.

<sup>40</sup> *ibid* 9.

<sup>41</sup> *ibid* 16-17. British colonial influence is used by the authors to refer to former British colonies whose legal systems are based on the inherited common law system.

independence.<sup>42</sup> Carey thus suggested that, former British colonies were more likely to develop independent judiciaries and that it may explain why former British colonies with independent courts are able to protect CPR more effectively.<sup>43</sup>

Those findings have been corroborated by La Porta et al who conducted empirical examination into the correlation between political freedom, judicial independence and the common law.<sup>44</sup> They collected a data set of constitutional provisions for judicial independence and constitutional review for seventy one countries around the world including civil, common and socialist law countries. Political Freedom was expressed in terms of democracy, political and human rights.<sup>45</sup> To measure judicial independence the following were taken into account; security of tenure, method of appointment, case law and the role of *stare decisis*.<sup>46</sup> For judicial review the following were considered; the hierarchy of norms within the legal system, the role of the constitution, the extent of its rigidity and the availability and scope of judicial review.<sup>47</sup> They found that judicial independence was stronger in common law countries than the civil law.<sup>48</sup> They also found strong support for the proposition that judicial independence is associated with greater freedom and that independence of the judiciary in common law jurisdictions, has a positive correlation with the level of freedom.<sup>49</sup>

Keith and Ogundele, however, have contradicted that position arguing that the evidence is inconclusive.<sup>50</sup> Their assertions were based on empirical examination into the relative influence of the colonial legacy, formal provisions for judicial independence and

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<sup>42</sup> Carey & Howard (n 37) 16-17.

<sup>43</sup> Carey (n 37) 63.

<sup>44</sup> La Porta et al, 'The Economic Consequences of Legal Origins' (n 35); La Porta et al, 'Judicial Checks and Balances' (n 36).

<sup>45</sup> La Porta et al 'Judicial Checks and Balances' (n 36) 448, 452-453.

<sup>46</sup> *ibid* 453.

<sup>47</sup> *ibid* 454.

<sup>48</sup> *ibid* 455. See also La Porta et al, 'The Economic Consequences of Legal Origins' (n 35) 287 & 298.

<sup>49</sup> La Porta et al 'Judicial Checks and Balances' (n 36) 457; La Porta et al 'The Economic Consequences of Legal Origins' (n 35) 287, 299.

<sup>50</sup> Linda C. Keith & Ayo Ogundele, 'Legal Systems and Constitutionalism in Sub-Saharan Africa: An Empirical Examination of Colonial Influences on Human Rights' (2007) 29 *Human Rights Quarterly*, 1065-1097. See also Linda C. Keith, 'National Constitutions and Human Rights Protection: Regional Differences and Colonial Influences' in Sabine Carey & Steven Poe (eds), *Understanding Human Rights Violations* (Ashgate 2004).

emergency powers, on states' human rights practices from 1977 to 2001. Judicial independence values included independent and transparent appointment procedures, security of tenure, financial autonomy, finality of decisions, exclusive jurisdiction over conflicts of a judicial nature and availability of exceptional courts.<sup>51</sup> The relevant provisions for emergency powers included a declaration by the legislature, dissolution of the legislature, duration and derogability of rights. Human Rights were expressed following the Personal Integrity Model which is a narrow set of rights including political imprisonment, torture, killing and disappearances.<sup>52</sup> According to the authors, although this set is limited it represents the core rights which have to be fulfilled in order to guarantee the exercise of other rights.<sup>53</sup> To measure abuse of these rights the authors used the Political Terror Scales relying on data provided by the U.S. Department of State Country reports and Amnesty International's reports.<sup>54</sup> They found civil law countries to have better human rights scores although evidence of the effect of the civil law system in that respect was limited.<sup>55</sup> They found common law countries to have fewer safeguards against excessive executive powers during states of emergency.<sup>56</sup> They also found that as opposed to French colonies British colonies had less provision for judicial independence.<sup>57</sup>

Keith and Ogundele's finding on judicial independence however seem to go against the general trend.<sup>58</sup> Moreover, it was clouded by the fact that their examination involved empirical analysis of *formal* provisions for judicial independence without consideration as to how those provisions operated in practice. They in fact conceded that the formal provisions as outlined in the constitution may not actually be achieved in practice.<sup>59</sup>

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<sup>51</sup> Keith & Ogundele (n 50) 1079-1082.

<sup>52</sup> *ibid* 1072.

<sup>53</sup> *ibid* 1073.

<sup>54</sup> *ibid*.

<sup>55</sup> *ibid* 1087-1087. But cf an earlier research which found countries with the British colonial influence to have relatively fewer abuse of CPR. See Stephen Poe, Neal Tate & Linda Keith, 'Repression of the Human Right to Personal Integrity Revisited: a Global Cross-national Study Covering the Years 1976-1993' (1999) 43(2) *International Studies Quarterly* 291.

<sup>56</sup> Keith & Ogundele (n 50) 1092-1093.

<sup>57</sup> *ibid* 1089, 1097.

<sup>58</sup> (n 36) above.

<sup>59</sup> Keith & Ogundele (n 50) 1093; Keith (n 50) 176.



Another point to note is that the constitutions of Francophone countries, (as demonstrated in Chapter 4 in the case of Cameroon) tend to formally acknowledge commitment to judicial independence whereas substantive provisions to guarantee that independence are left to subordinate legislation where potentially the president is granted extensive powers over the judicial tenure.<sup>60</sup> Keith and Ogundele confirmed that a closer examination revealed that over sixty-five percent of francophone countries had no provisions for secured tenure.<sup>61</sup> This was contrasted with former British colonies where only thirty five percent had no such provisions.<sup>62</sup>

André Cabanis and Michel Martin observed that francophone African constitutions in the 1960s and 1990s especially, resembled very closely the French model in which judicial independence is guaranteed in very abstract terms.<sup>63</sup> Whereas, as Charles Fombad observed, the constitutions of former British colonies had more elaborate and potentially better provisions guaranteeing institutional and personal autonomy through the entrenchment of more stringent provisions for financial autonomy, security of tenure and transparent and objective appointment and disciplinary systems.<sup>64</sup>

From the literature, it would seem on balance therefore, that in terms of constitutional provisions, the British colonial legacy appears to adhere more to arrangements that can promote judicial independence. In the case of Cameroon, as was demonstrated in Chapter 2, the British colonial legacy in Southern Cameroons in fact had more entrenched and stringent provisions for securing judicial independence.<sup>65</sup> On the other hand, the inherited French model and its subsequent development in Cameroon has adhered to a tradition which recognises judicial independence in the constitution, but undermines it in

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<sup>60</sup> See for instance Constitution of Chad 1996, art 151-155 state in very broad terms commitment to judicial independence and the role of the President in guaranteeing that independence. While article 156 provides that the organisation of the judiciary and other conditions of service will be regulated by legislation. Similar provisions also exist under the Constitution of Gabon 1991, art 68-72.

<sup>61</sup> Keith & Ogundele (n 50) 1089.

<sup>62</sup> *ibid.*

<sup>63</sup> André Cabanis and Michel L.Martin, *Les Constitutions d'Afrique Francophone: Evolution Récentes*, (KARTHALA 1999) 153-160. Moyrand has conceded that one problem which undermines constitutionalism in Francophone Africa is the failure to submit executive officials to the rule of law as the judiciaries lack independence. Moyrand (n 27) 876.

<sup>64</sup> Fombad, 'A Preliminary Assessment' (n 37) 257

<sup>65</sup> See ch 2, s 3.3 at 78-79.

subordinate legislation by granting the President excessive powers over the judiciary. One consequence as demonstrated in Chapter 4 has been the inability of the judiciary to effectively protect CPR. It is argued here that, given the potential of the British colonial legacy to develop more favourable institutions of judicial insulation, it should be preferred or at the very least considered seriously in terms of its benefits for protecting CPR through constitutional development.

The British colonial legacy of constitutional review has also been said to contribute to the better performance of former British colonies in terms of the protection of CPR.<sup>66</sup> Frank Moderne for one has argued that Commonwealth African countries have a better record in constitutionalism and the protection of CPR partly due to their system of constitutional review.<sup>67</sup> Constitutional review in former British colonies is structured in such a way as to allow citizens access to ordinary courts with jurisdiction in that respect. Moreover, a court can actually make a declaration on the constitutionality of legislation already in force.<sup>68</sup> Such a system, as was demonstrated in Chapter 2, was introduced and practiced in former Southern Cameroons.<sup>69</sup> On the contrary, some Francophone African countries<sup>70</sup> have continued to adhere to the inherited French model<sup>71</sup> in spite of its limitations as demonstrated in Chapter 5 in the case of Cameroon. Although, as Kwasi Prempeh cautions, socio-political realities of Commonwealth Africa such as ‘low levels of legal literacy and rights awareness’ can affect the extent to which people resort to constitutional review,<sup>72</sup> the British colonial heritage is still worth exploring for the purpose of enhancing the realisation of CPR.

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<sup>66</sup> Moderne (n 35) 335; Fombad, *The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?* (1998) 42 (2) *Journal of African Law* 172, 173; Kwasi Prempeh, ‘*Marbury* in Africa: Judicial Review and the Challenge of Constitutionalism in Contemporary Africa’ (2006) 80(1) *Tulane Law Review* 1.

<sup>67</sup> Moderne (n 35) 335.

<sup>68</sup> The *Ochieng* case discussed in ch 5 at 207. See also the Ugandan case of *Akankwasa Damian v Uganda* (Constitutional Petition No.5) UGCC7 (21 April 2011) and the Kenyan case of *Jesse Kamau & 25 Others v Attorney General* [2010]KLR 1 (judgement of 24 May 2010) discussed in Jamil Mujuzi, ‘Separating the Church from the State: The Kenyan High Courts Decision in *Jesse Kamau & 25 Others v Attorney General* (judgement of 24 May 2010)’ (2011) 55(2) *Journal of African Law* 314.

<sup>69</sup> See ch 2, s 3.4 at 79-80.

<sup>70</sup> with notable exceptions such as Benin, Chad and Mali.

<sup>71</sup> Fombad, ‘Constitutional Reforms in France and their Implications for Constitutionalism in Francophone Africa’ (2008) *Open Society Justice Initiative: AfriMAP* 1.

<sup>72</sup> Prempeh, ‘*Marbury* in Africa: Judicial Review’ (n 66) 58-83..

A further relevant aspect of the British colonial legacy is its supposed ability to limit executive power.<sup>73</sup> Moderne has argued that constitutionalism is more prevalent in former British colonies due in part to the colonial experience with the parliamentary system which led to the establishment of constitutions with stronger checks on the executive.<sup>74</sup> Similarly, Ben Nwabueze has argued that a difference in the two systems can be gleaned from the discretionary powers that the executive has to act against citizens. He asserts that in the common law system, the executive is under considerable constraint and depends largely on the legislature for its powers.<sup>75</sup> The position is contrasted with the French civil law system where the executive is vested with wide ranging powers including residual legislative powers independent of the legislature, thus increasing the potential for arbitrary executive action.<sup>76</sup> For Gonidec and Dubouis executive power in francophone Africa is excessive as the executive controls all other institutions (judiciary, legislature, other executive, para-public institutions, the civil society) and has developed far beyond that contemplated by the French to the extent of being uncontrollable, providing scope for arbitrary actions.<sup>77</sup> Félix Bankounda-Mpele goes further to add that a decisive factor attributed to the failure of devising viable constitutional orders in francophone Africa has been the extent of executive power.<sup>78</sup> He notes in particular that the 1990s constitutional revival was more rhetorical in that although modest efforts were made in opening the political space, meaningful change was hindered by continued executive supremacy.<sup>79</sup> Presidents in francophone Africa continued to wield uncontrolled powers over the electoral system, the legislature and the judiciary.<sup>80</sup>

From the literature it would appear that the arguments on the British colonial legacy make uncritical assumptions about executive power. Nwabueze for instance fails to

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<sup>73</sup> Moderne (n 35); Ben O. Nwabueze, *Constitutionalism in the Emergent States* (Hurst Publishers 1973) 35.

<sup>74</sup> Moderne (n 35). See also Daimond & Plattner (n 34) 35.

<sup>75</sup> Nwabueze (n 73) 35.

<sup>76</sup> *ibid.*

<sup>77</sup> Louis Dubois, 'Le Régimes Présidentiel dans les Nouvelles Constitutions des États Africains d'Expression Française' (1962) 691 *Penant* 218-222; Pierre François Gonidec, *Les Systèmes Politiques Africains* (Tome II, Librairie Générale de Droit 1974) 80.

<sup>78</sup> Félix Bankounda-Mpele F, 'Repenser le Président Africain' (Viiè Congres Français De Droit Constitutionnel sur la 50è Anniversaire de la Constitution du 4 Octobre 1958, 25-27 September 2008, Paris) 14-15.

<sup>79</sup> *ibid* 9-11.

<sup>80</sup> *ibid.*

recognise that the executive can be vested with discretionary powers – albeit not to a comparable extent as a corollary in a former French colony. As was demonstrated in Chapter 2 in the case of Southern Cameroons the executive was vested with a number of discretionary powers. Moderne and Nwabueze also note the accountability role of parliament on the executive but fail to acknowledge that in terms of separation of powers, there was no clear distinction between parliament and the executive. In fact as the Southern Cameroons Constitution demonstrated, the parliamentary system is characterised by a network of complicated arrangements which vests the same individuals with executive and legislative powers.<sup>81</sup> Such a system, it may be argued has been able to operate constructively in Britain in part due to tradition, conventions and the democratic nature of the British society.<sup>82</sup> In the African context with weak democratic institutions and no equivalent conventions and traditions associated with the parliamentary system, it can potentially lead to usurpation of power and tyranny if other restraint mechanisms are not robust. There is no intention to argue here that executive power is not subject to restraint under the British colonial legacy. The point being made is simply that the potential to do so should not be overstated.

Admittedly, the executive, particularly the president in former French colonies as is exemplified in the case of Cameroon wields considerable powers over major aspects of the constitutional system a fact which has contributed to the problem of CPR violation. A factor which to an extent may account for the poorer performance of Francophone Africa, as Edward Glaeser and Andrei Shleifer have argued is the fragility or absence of accountability mechanisms which is further undermined in civil law countries by excessive executive control over the judiciary.<sup>83</sup> In their view that additional power leaves the president almost unaccountable as the judiciary would rather seek to reflect the executive's wishes than protect the citizen. As a result of little accountability the president can more easily become authoritarian.<sup>84</sup>

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<sup>81</sup> See ch 2, s 3.2 at 76-78.

<sup>82</sup> Bruce Ackerman, 'The Rise of World Constitutionalism' (1997) 83(4) *Virginia Law Review* 771, 772.

<sup>83</sup> Glaeser and Shleifer (n 35) 1218-1219.

<sup>84</sup> *ibid.*

The French colonial legacy as highlighted in the literature and perhaps confirmed by the Cameroonian case study certainly has a system of separation of powers that can be adverse to the effective enforcement of CPR. Nevertheless, the British legacy also has some inherent deficiencies which make the system not a viable option by itself. However, there are features of both systems that can be built upon potentially to develop a more functional separation of powers and robust checks and balances in order to enhance the realisation of CPR. An example would be the *additional* separation of executive powers in the French legacy and parliamentary control of the executive in the British legacy (although admittedly there should be a distinct separation of executive and legislative powers).

The above discussion of the British and French colonial legacy was an attempt to analyse the systems in terms of their potential to contribute to a more robust foundation for CPR enforcement in the context of Cameroon. Given that Cameroon is supposedly bijural in that sense, it would be worthwhile considering what each system has to contribute and to consciously avoid those elements of the French colonial legacy which have already proved divisive. Like the French legacy, the British legacy has been applied (albeit mostly) in the Anglophone regions and has formed part of the lived experiences of the people. Rather than continue to ignore it, it should be recognised as a fact which constitutes the realities of Cameroon.

## **2.2. Constitutionalism and Indigenous Customs and Institutions**

Like the colonial period, indigenous customs in contemporary Cameroon have maintained their relegated position to private law matters governing communities predominantly in the rural areas. Undoubtedly, some statutory recognition has been given to the application of indigenous customs and institutions.<sup>85</sup> Moreover, judges have given effect to some customs that have been recognised as governing parties in a case

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<sup>85</sup> Law No. 79-4 of 29 June 1979 on Customary and Alkali Courts, art 1; Southern Cameroons High Court Law 1955, s 27(1); Customary Courts Ordinance 1948, s 18(1) (a).

emanating from particular communities.<sup>86</sup> However, a rule of native law or custom will not be applied if it was considered repugnant to natural justice, equity and good conscience or if it was incompatible with written law or public policy.<sup>87</sup>

Advocating the revitalisation of indigenous customs and institutions here is subject to a number of caveats. Firstly, it is not every custom or institution that should be integrated as some may be incompatible with the exercise of CPR. The emphasis should be on the positive aspects that can make a contribution to the framework for their enforcement.<sup>88</sup> Secondly, given Cameroon's cultural diversity, it may be difficult to identify specific features or to select some against others without creating further problems of ethnic divisions. Deng has noted that such a possibility always exists.<sup>89</sup> However, in the case of Cameroon as Carlson Anyangwe has observed, there is a great deal of commonality between communities particularly as they have come to live in close proximity and interact closely.<sup>90</sup> Moreover, due to migration and intertribal wars and conquests during pre-colonial times communities came to embrace or imbibe each other's cultures.<sup>91</sup> As a result, uniform or similar patterns can be identified amongst groups of communities.<sup>92</sup> Yenshu Vubo and George Ngwa identify some core ideas and practices of the Tikar and

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<sup>86</sup> In *Agbortar & Oben v. Chief Bessong*, (1968) W.C.L.R. 43, 45; the court held that it was bound to take judicial notice of the well established tradition in West Cameroon and the forest areas in particular that chiefs ruled through traditional councils. See also *Immaculate Vefonge v. Samuel Lyonga Yupke*, Appeal No. CASWP/CC/21/81 (unreported) but cited in Ephraim N. Ngwafor, *Family Law in Anglophone Cameroon* (University of Regina Press 1993) 8.

<sup>87</sup> See (n 85) above.

<sup>88</sup> David Pimentel who endorses a similar view holds that it may be possible to determine which features are valued and important to retain and those that are particularly divisive. See Pimentel, 'Rule of Law without Cultural Imperialism: Reinforcing Customary Justice through Collateral Review in Southern Sudan' (2010) 2(1) *Hague Journal on the Rule of Law* 1, 6-7.

<sup>89</sup> Deng (n 13) 185-187.

<sup>90</sup> Carlson Anyangwe, *The Cameroonian Judicial System* (CEPER 1987) 239.

<sup>91</sup> An example here is the Tikar in the Grassfields of Cameroon who share an identical socio-political organisation due largely to their common ancestry, conquest and integration. See Ade Ajayi & Ian Espie (eds) *A Thousand Years of West African History* (Ibadan University Press 1965) 45-65; Jean-Pierre Warnier, 'Histoire du Peuplement et Genèse des Paysages dans L'ouest Camerounais' (1984) 25(4) *Journal of African History* 395, 399-400; Yenshu Vubo & George Ngwa, 'Changing Intercommunity Relations and the Politics of Identity in the Northern Mezam Area, Cameroon' (2001) 161 *Cahiers d'Études Africaines* 163, 166-169.

<sup>92</sup> Anyangwe (n 90) 239-240; John Mbaku, *Culture and Customs of Cameroon* (Greenwood Press 2005) 4-5. Ian Fowler and David Zeitlyn for instance describe the Grassfield communities in the Northwest and part of the Western Regions as 'reworking a common core of ideas and practices into distinctive individual formations'. See Ian Fowler and David Zeitlyn, 'Preface' in Fowler & Zeitlyn (eds) *African Crossroads: Intersections between History and Anthropology in Cameroon* (vol. 2, Berghahn Books 1996) xviii.

Chambas as including a sense of community, collective welfare and consultation in decision making.<sup>93</sup> Thirdly, reference to indigenous customs and institutions is not to indicate that Cameroonians revert wholesale to the lived experiences of the pre-colonial period. Indigenous customs or institutions then (and even now) on their own cannot sufficiently regulate society as it is today.<sup>94</sup> Moreover, what is referred to in contemporary terms as custom or institutions is nuanced by the influence of colonialism and the subsequent evolution of these customs and institutions themselves.<sup>95</sup> This does not preclude an examination of their pre-colonial position. However, any such examination should bear the important consideration that customs are not static and their application today may require some adaptation to reflect the lived realities of people today.<sup>96</sup> Ideally, contextualisation should entail recapturing of traditional institutions to make them relevant to the present needs of the society rather than reproducing them especially where reproduction would not serve the purpose for which they are reproduced (in the present case the realisation of CPR).

The rest of the subsection will look into some examples of indigenous customs and institutions. That examination will be conducted under two sub-headings; traditional authority, and judicial processes and regulatory bodies. Admittedly that division does not fit neatly into the framework for constitutionalism developed in Chapter 1 and applied throughout the thesis. Indigenous institutions and customs were not expressed in terms of Western concepts of constitutionalism. The concern here is less about unearthing principles or institutions expressed in those exact terms but more about elucidating on indigenous antecedents and how they resonate with, and can contribute to modern conceptions of constitutionalism in Cameroon.

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<sup>93</sup> Vubo & Ngwa (n 91) 168, 172.

<sup>94</sup> Cf Deng (n 13); Kamto (n 27) and Moyrand (n 27) above.

<sup>95</sup> Woodman (n 32) 156; Pimentel (n 88) 6 esp n 22.

<sup>96</sup> An-Nai'im seems to be of the view that African societies should seek to interpret their pre-colonial existence as if colonialism never existed. That is perhaps an impossible pursuit as it is generally accepted that pre-colonial law for instance was largely unwritten and early attempts at writing were done by Western scholars. An-Na'im admits the difficulties with such a proposition but also states almost controversially that historical notions of accountability and sovereignty should be adapted to contemporary realities by imagining how they might have evolved without the disruptive effect of colonialism. See An-Na'im (n 7) 31-35. cf. Woodman (n 32) 156; Pimentel (n 88) 6 esp n 22 who express an opposing view.

### 2.2.1. Traditional Authority

The organisation of traditional authority was influenced by what has been referred to as the ‘corporate spirit’<sup>97</sup> which underpinned socio-political interaction between members of most indigenous communities in Cameroon.<sup>98</sup> The ‘corporate spirit’ or corporate orientation refers primarily to a community composed of an aggregate of individuals with individual and collective entitlements and responsibilities.<sup>99</sup> At the core of social interaction was the need to promote the common good, the well-being of the community. That did not imply that individual interests were subsumed by community interests.<sup>100</sup> By placing emphasis on sensitivity to community interest, it ensured that as a group, members had their interest protected while at the same time individual interest or needs were taken into account.<sup>101</sup>

In terms of the organisational structure of leadership, a chief or *fon* was usually at the apex and assisted by traditional councils or council of elders. The basis for traditional authority was the protection of the community and promotion of its wellbeing.<sup>102</sup> Authority was seen as a communal matter although it was vested in and exercised by community leaders.<sup>103</sup> When these leaders exercised their authority, they did so in the interest and on behalf of the community. As a result, for exercise of authority to be

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<sup>97</sup> Vubo & Ngwa use the term as opposed to communitarianism. According to them, the ‘corporate spirit’ was the guarding principle in the organisation of Native Authority Units during the British colonial administration. Vubo & Ngwa (n 91) 172.

<sup>98</sup> There is no attempt here to oversimplify the divergence that may exist between communities. However, due to the organisation of indigenous communities in terms of family lineages, communal identity tends to be interpreted in terms of wider family relations giving rise to the communal orientation of social life. See Malcolm Ruel, *Leopard and Leaders: Constitutional Politics Among A Cross River People* (Tavistock Publications 1969) 133; Vubo & Ngwa (n 91) 172-173.

<sup>99</sup> Ruel (n 98) 133-138.

<sup>100</sup> *ibid.*

<sup>101</sup> This appears to resonate with the kind of moderate communitarianism advocated by Kwame Gyekye which projects both individual and communal interest as mutually dependent and mutually reinforcing. Emmanuel Eze also advocates such a view on moderate communitarianism although he argues that a more profound analysis of Gyekye reveals that he is not as moderate as he purports to be. See Eze M, ‘What is African Communitarianism? Against Consensus as a Regulative Ideal’ (2008) 27(4) *South African Journal of Philosophy* 386; Gyekye, *Tradition and Modernity: Philosophical Reflections on the African Experience* (Oxford University Press 1997) 35-75.

<sup>102</sup> Anyangwe (n 90) 8; Mbaku (n 92) 12; Bongfen Chem-Laghee, ‘The Origins of the Southern Cameroons House of Chiefs’ (1983) 16(4) *The International Journal of African Historical Studies* 653, 655.

<sup>103</sup> *ibid.* See also Laurent-Roger Ngimbog, ‘La Justice Administrative à L’Épreuve du Phénomène de la Corruption au Cameroun’ (2002)2 (51-52) *Droit et Société* 301, 304.



legitimate and elicit compliance it must have reflected the wishes of the people and had their prior approval through their representatives at the various levels of community groupings. According to Malcolm Ruel, the Bayang held that ‘When a leader speaks he speaks with the voice of the community, not his own voice.’<sup>104</sup> Some chiefs or *a-fon*<sup>105</sup> whether in centralised or less centralised communities had little or no real powers and exercised authority through other traditional institutions.<sup>106</sup> Among the less centralised communities within Tikars (such as the Aghem, Mbembe, Chamba and Widekum) traditional authority was exercised by a *fon* who wielded little or no political authority but ruled through a council of elders.<sup>107</sup> That council was composed of the heads or representatives of the various family lineages (*meukumsi*) within the community. The village head or leader presided over the council’s meetings. However, the processes in the council were deliberative with the councillors given an opportunity to express their opinions on matters raised in the meetings. Decisions were arrived at by consensus and announced by the leader by virtue of his position as leader. A similar pattern was exhibited among the less centralised Bayangs in the Cross River and the Coastal Bantus.<sup>108</sup> The Kpe from the Coastal Bantu had at the head of the village a chief (*sang’a mboa*) who commanded authority and respect but had no wide powers.<sup>109</sup> The chief was more the head of a body of elders of the village (*vambaki*) in whom formal powers were vested.<sup>110</sup> The *vambaki* was composed of representatives from the quarter-heads which in turn consisted of representatives of the family lineages within the communities in the village.<sup>111</sup> Even within more centralised communities like the *Mankom* (a Tikar community) the head of the village (or *fondom* in that case), the *fon* exercised traditional authority on behalf of the people through a regulatory society known as *kwi’fo*.<sup>112</sup> *Kwi’fo*

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<sup>104</sup> Ruel (n 98) 136.

<sup>105</sup> *A-fon* is plural for *fon*.

<sup>106</sup> Chem-Laghee (n 102) 655-656; Anyangwe (n 90) 8; Mbaku (n 92) 12

<sup>107</sup> Chem-Laghee (n 102) 655, Anyangwe (n 90) 14.

<sup>108</sup> The Coastal Bantus include the Kpe-Mboko (otherwise known as Bakweri), Duala-Limba and Tanga-Yasa Groups located across both the English and French speaking Regions of Cameroon. See Edwin Ardener, *Coastal Bantu of the Cameroons* (International African Institute 1956) 71; Mbaku (n 92) 12-14.

<sup>109</sup> Ardener (n 108) 71. The chiefs of the Duala-Limba communities are also informal heads exercising authority through similar traditional councils. See Ardener (n 108) 71.

<sup>110</sup> Ardener (n 108) 71.

<sup>111</sup> *ibid*.

<sup>112</sup> Ade Angwafor, ‘The Mankon People- Mamitic Nomads or Bantu?’ (1992) 4 *The NUCS Journal* 1, 28.

also had the important mandate of acting as an accountability institution to streamline the arbitrary exercise of power by the *fon*.<sup>113</sup>

These patterns have not changed dramatically in contemporary times except that the exercise of traditional powers by chiefs or *a-fon* has continued to decline due in part to the influence of state authority over indigenous communities and the involvement of some traditional leaders in politics to promote personal interest rather than community interest.<sup>114</sup> The pattern of mutation of the influence of traditional authority however has been variegated with traditional leaders in the more centralised communities particularly in the Grassfield regions retaining remarkable influence and respect from their communities. Whereas, traditional leaders in the less centralised communities in the coastal and southern regions have retained only little influence compared to their Grassfield contemporaries.<sup>115</sup> Indeed, traditional councils have gained increasing legitimacy and appear to command more respect from the populations.<sup>116</sup> They are composed of respected and influential members of the community who purport to act collectively on behalf of the community.

Certainly, the account above is not intended to imply that traditional authority in every indigenous community in Cameroon is underpinned by the need to safeguard the wellbeing of the community or that it is subject to some form of checks and balances. The *Lamido* (traditional leader) of Rey Bouba in the Northern Region of Cameroon is a noted instance of autocratic traditional authority characterised by such practices as slavery, arbitrary detention in private prisons and torture.<sup>117</sup> Nevertheless, this is one of

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<sup>113</sup> *ibid.*

<sup>114</sup> Ibrahim Mouiche, *Autorités Traditionnelles et Démocratisation au Cameroun: Entre Centralité de l'Etat et Logique de Terroir* (Lit Verlag Münster 2005) 5-6, 20; Cosmas Checka, 'Traditional Authority at the Crossroads of Governance in Republican Cameroon' (2008) 33 (2) *Africa Development* 67-89.

<sup>115</sup> Peter Geschiere, 'Chiefs and Colonial Rule in Cameroon: Inventing Chieftaincy, French and British Style' (1993) 63(2) *Journal of the International African Institute* 151, 166-169.

<sup>116</sup> Checka (n 114) 67-89.

<sup>117</sup> Mouiche (n 114) 17; United States Department of State, '2010 Human Rights Report: Cameroon' para 1.c. <[www.state.gov/j/drl/rls/hrrpt/2010/af/154335.htm](http://www.state.gov/j/drl/rls/hrrpt/2010/af/154335.htm)> accessed 15 May 2012; Article 19, 'Northern Cameroon: Attacks on Freedom of Expression by Governmental and Traditional Authorities' 1995 <[www.article19.org/data/files/pdfs/publications/cameroon-attacks-on-foe.pdf](http://www.article19.org/data/files/pdfs/publications/cameroon-attacks-on-foe.pdf)> accessed 12 May 2012.

the rare instances which go against the general trend and has not gone without condemnation from the Cameroonian public.<sup>118</sup>

However, at least three aspects of great significance can be drawn from the general pattern and exercise of traditional authority. The first is the purported source and rationale for traditional authority; the second is their potential to contribute to the checks and balances system at the national level and the third is their potential to enhance popular participation at the local level.

On the first point, although chiefs were regarded as supreme leaders their authority only derived from the people through their representatives in the traditional councils and leaders who attempted to extend their authority were fiercely opposed.<sup>119</sup> Moreover, the rationale for their leadership was the leader's ability to safeguard the wellbeing of the community. A legendary chief of the *Kpe*, Kuva Likenye, is known to have been one of the most prominent and respected of *Kpe* leaders.<sup>120</sup> According to Martin Njeuma, Kuva's competence and trustworthiness helped reinforce his authority and confidence in the community in his ability to protect their interest.<sup>121</sup> It can be inferred, therefore, that failure to promote or safeguard that wellbeing or acting for self-interest was at variance with the basis for leadership and therefore a leader could be opposed or even deposed for those reasons. Edwin Ardener reported that a village-head or chief of the *Mboko* (a coastal Bantu community) once voluntarily stepped down due to age and age related incapacities in favour of a more active and astute person who could lead the community.<sup>122</sup> The point being made here is that rationale for authority can be instructive in developing a contextualised basis for the vesting of and the exercise of public authority in Cameroon. A similar point has been made more broadly by Egoshe Osaghae who asserts that the philosophical perspective of traditional authority is that the source and

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<sup>118</sup> *ibid.*

<sup>119</sup> Ruel (n 98) 191; Vubo & Ngwa (n 91) 172.

<sup>120</sup> Ardener (n 108) 21-25; Martin Njeuma, *Villiant Soldiers from Fako: An extract from 'Who is Who in Bakweriland'* (MEGA Impression 2000) 5-14.

<sup>121</sup> Njeuma (n 120) 12.

<sup>122</sup> Ardener (n 120) 81.

rationale for power is the collective good of all members of the community.<sup>123</sup> Such a philosophical perspective he argues, can form a strong philosophical basis for the development of accountable governments in Africa.<sup>124</sup>

On the second point, at the national level, a House of Chiefs (HoC) like that which existed in the former Southern Cameroons could be created and vested with more than just advisory powers in certain aspects. So, the HoC could have powers to consider Bills generally and give its opinion to Parliament.<sup>125</sup> But on some specific areas such as constitutional amendments or legislation affecting its powers, presidential powers and CPR, a bill passed by Parliament should be assented to by a majority of the HoC. Where the latter votes down or proposes amendments to such a bill, it should go back to Parliament to be debated again to take into account the views of the HoC. However, the bill may be subsequently passed in its original form (without amendment proposed by the HoC) through an enhanced majority vote of Parliament. For instance, if at the first instance, the majority required was a one-third majority, then it could be increased to a two-third. It is recognised that though traditional chiefs represent their communities, they are not democratically elected and cannot therefore be granted veto powers. Nevertheless, although the HoC would not be exercising a veto, it has the capacity to influence the legislative process to ensure further debate on issues affecting CPR. In that way, it creates an additional level of oversight.

At the regional level, traditional councils can be strengthened and attached to administrative authorities and the HoC so that these councils can directly channel the concerns of their communities to the central administration and the HoC. One advantage of using traditional councils is that, they are situated locally and therefore more

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<sup>123</sup> Egoshe Osaghae, 'The Passage from the Past to the Present in African Political Thought: The Question of Relevance' in Zaccheus Ali, John Ayoade & Adigun Agbaje (eds) *African Traditional Political Thought and Institutions* (Centre for Black & African Arts & Civilization 1989) 53-75.

<sup>124</sup> *ibid.*

<sup>125</sup> In view of the fact that chiefs are generally the custodians of local customs and traditions and in many instances the position of women under customary law is not equal to that of men, there might be a concern that a House of Chiefs would seek to perpetuate gender inequality through national law. However, there is a safeguard against this in the Preamble of the Constitution of Cameroon where equality of the sexes is guaranteed. Therefore, any bill which is inconsistent with gender equality would be unconstitutional. In any event, under the author's proposal, the House of Chiefs would not have the powers to initiate bills. It will only have powers to review bills initiated in the National Assembly.

accessible to the population. They can provide avenues through which people discuss their concerns, their needs and expectations from the government. They can encourage popular participation and provide indirect access to governmental institutions which are currently removed from the population. Trutz von Trotha argues that, traditional authority is a forum for the articulation of local interests, and defender of such interests in the central government.<sup>126</sup>

Advocating for recognition of traditional authority at the national and local level should not be perceived as idealistic. Botswana<sup>127</sup> and Ghana<sup>128</sup> for instance have a national House of Chiefs (and also regional houses in Ghana). It has been argued with respect to Botswana that, its democratic advancement can be attributed partly to its ability to synthesise indigenous practices with its inherited British model.<sup>129</sup> Its House of Chiefs for instance is vested with powers to consider bills submitted to it by the National Assembly and for its resolution on such bills to be debated in the National Assembly.<sup>130</sup> It is entitled to discuss matters within the executive and legislative authority which it deems to be in the interest of the communities it represents and to make representations to the President and the National Assembly.<sup>131</sup> Moreover, the National Assembly is required to refer any bill to amend the Constitution, or bills affecting the powers of chiefs, other traditional authority, customary law courts, the ascertainment of customary law and tribal property to the HoC.<sup>132</sup> At the local level, the *Kgotla* (village assemblies) facilitate the participation of citizens in local government by providing an avenue through which local issues can be debated.<sup>133</sup> Because the *Kgotla* are attached to village development

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<sup>126</sup> Trutz von Trotha, 'From Administrative to Civil Chieftaincy: Some Problems and Prospects of African Chieftaincy' (1996) 37-38 *Journal of Legal Pluralism* 79, 99.

<sup>127</sup> Constitution of Botswana, s 77(1).

<sup>128</sup> Constitution of Ghana, s 271(1).

<sup>129</sup> Thomas Ohlson, Stephen Stedman and Robert Davies, *The New is Not Yet Born: Conflict Resolution in Southern Africa* (The Brookings Institute 1994) 218; Maxwell Owusu, 'Domesticating Democracy: Culture, Civil Society and Constitutionalism' (1997) 39(1) *Comparative Studies in Society and History* 120, 137; Kwasi Prempeh, 'Africa's "Constitutionalism Revival": False Start or New Dawn?' (2007) 5(3) *International Journal of Constitutional Law* 469; Bertha Osei-Hwedie, 'Botswana: Indigenous Institutions, Civil Society and Government in Peace Building in Southern Africa' (2010) 16(2) *Journal of International Development and Cooperation* 115.

<sup>130</sup> Constitution of Botswana, s 85(1) (2).

<sup>131</sup> *ibid* s 85(5).

<sup>132</sup> *ibid* s 88(2).

<sup>133</sup> (n 129) above.

committees which are represented in the district administration, they provide a channel of communication between the local population and the administration.<sup>134</sup> It has been said that, political leaders, Members of Parliament and Cabinet Ministers are resorting increasingly to *Kgotla* to explain proposed government policies and obtain the opinion of the people.<sup>135</sup> Besides the participatory aspect, the *Kgotla* can also be seen as a means through which citizens can demand better protection for their rights.

With respect to Cameroon, as argued earlier, a HoC and traditional councils could plausibly be used to contribute to the reinforcement of constitutionalism and therefore more effective realisation of CPR.

### ***2.2.2. Judicial Processes and Regulatory Bodies***

Unsurprisingly, indigenous judicial processes in Cameroon were many and varied from community to community given their characteristic informality.<sup>136</sup> Yet, some common features included the chief presiding at 'judicial sessions' with a 'panel' composed of representative of the community, the parties to a dispute given the opportunity to present their case and to defend an accusation, including the assistance of witnesses<sup>137</sup> (which may some times include members of the panel).<sup>138</sup> The panels were either special community groupings charged with 'judicial' functions, or traditional councils advising the chief or *fon* or a combination of various levels of traditional councils. The *Banso* (a Tikar community) 'fon's court' (*takebu*) was composed of the *fon* and his councillors.<sup>139</sup> Whereas the Mankon as seen above had a special body, the *kwi'fo* which was specifically charged with judicial functions. Cases at the level of the chief's court were usually those

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<sup>134</sup> Ohlson et al (n 129) 218; Osei-Hwedie (n 129) 120-121.

<sup>135</sup> Osei-Hwedie (n 129) 120.

<sup>136</sup> Anyangwe (n 90) 16-17; Victoria Time, 'The Function of Indigenous Law in a Modern Economic and Political State: The Cameroon Scenario' (2011) 3(9) *Journal of Law and Conflict Resolution* 169.

<sup>137</sup> Ardener (n 108) 72-73; Merran McCulloch, 'The Tikar' in Daryll Forde (eds) *Peoples of the Central Cameroons* (International African Institute 1954) 41; Ruel (n 98) 157-162; Anyangwe (n 90) 16-17; Time (n 136) 170, Ngimbog (n 103) 304. See also Henry Kam Kah, 'Regulatory Societies, Peacebuilding and Maintenance in the Cross River Regions of Nigeria and Cameroon' (2011) 1(2) *African Conflict and Peacebuilding Review* 50.

<sup>138</sup> This is a common feature among the Coastal Bantu. See Ardener (n 108) 72-73,

<sup>139</sup> McCulloch (n 137) 40.

that had been heard (unsatisfactorily) at lower levels such as the family or quarter level. The chief's court was some form of appeal which prior to colonialism could be considered the final level. Although the chief participated in the discussions, he did not make unilateral decisions.<sup>140</sup> The chief's role was more of endorsement of the decision or advice of the council.<sup>141</sup> Despite the merits indigenous judicial processes may have in the communities concerned, the institutional arrangements obviously raise issues of independence and transparency which are salient to modern judicial institutions and processes. However, what is of particular interest is the mechanism by which 'judicial' decisions were enforced.

A common feature amongst indigenous communities in Cameroon was the existence of regulatory societies which enhanced the enforceability of decisions. Some of these include the *kwi'fo*, *nwerong* (of the Nso), *nganya* (of the *Kpe*) and the *ekpe* in the Cross River Communities.<sup>142</sup> Decisions were enforced primary on the basis that they had been arrived at on behalf of the community and because the judicial processes were open to the public, where decisions were not overtly disapproved by the public, they were deemed to have acquired public assent and were therefore enforced.<sup>143</sup> A party dissatisfied with the decision of traditional councils nowadays may defer to state courts. Prior to colonialism and more restrictedly during the colonial period, the support of regulatory societies was enlisted in extreme cases to enforce the decisions of the councils.<sup>144</sup> Given that at the council level a decision may have been final, failure to comply represented a serious breach of authority and therefore a violation of the community which was represented by the council.<sup>145</sup> In view of the severity, it required that an offender be subjected to extreme measures such as the use of a regulatory body to ensure enforcement.

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<sup>140</sup> *ibid.* See also I. Dugast, 'The Banen, Bafia and Balom', in Daryll Forde (ed), *Peoples of the Central Cameroons* (The International African Institute 1954) 144.

<sup>141</sup> Chem-Laghee (n 102) 655.

<sup>142</sup> Ruel (n 98) 216-258; Anyangwe (n 90) 14; Kah (n 137) 56.

<sup>143</sup> Ngimbog (n 103) 304; Ruel (n 98) 162, 165, 168; Ardener (n 108) 73.

<sup>144</sup> Ruel (n 98) 216-258; Chem-Langhee (n 102) 655; Kah, (n 137) 56, Rosalind Hackett, *Religion in Calabar: The Religious Life and History of a Nigerian Town* (Mouton de Gruter 1988) 34-35.

<sup>145</sup> Ruel (n 98) 136-140.

The regulatory bodies were perceived as ‘protectors or defenders’ of the community acting for their well-being against perceived and supernatural threats.<sup>146</sup> That perception of their role was fundamental to their legitimacy and consequently their authority.<sup>147</sup> Their authority was also influenced by the fact that they were composed of leading members of the community. In addition, these societies were perceived as a link with the forebears, a supernatural dimension which consolidated their authority.<sup>148</sup> Thus, resisting compliance with a decision endorsed by a regulatory society was deemed inconceivable unless the recalcitrant person wished to invoke upon themselves intolerable misfortune. It was considered serious because on the one hand it went against the ethos of the community and, on the other, it demonstrated contempt for authority and therefore the community at large. According to Malcolm Ruel, in the *Bayang* communities, the regulatory body known as *ekpe* operated as a sanction to protect individual rights or uphold a community decision.<sup>149</sup> The authority of *ekpe* was inviolable and greater than a community council acting alone. An individual failing to comply with an *ekpe* endorsed sanction was likely to be shunned by the society (in addition to possible misfortunes) as a reaction to contempt of the community and its ethos.<sup>150</sup> Such consequences also had wider significance for other members of the community as they played a pre-emptive role to indicate to other members of the community that their membership imposed certain standards of behaviour and responsibility, breach of which would have elicited similar sanctions.<sup>151</sup> Of particular significance in the execution of an *ekpe* endorsed sanction was the fact that the defiant party was given opportunity to explain to *ekpe* the reason for defiance which in certain circumstances might have required a rehearing of the original dispute.<sup>152</sup> That fact suggested that *ekpe* methods were not necessarily arbitrary.

Like traditional leadership, the authority of regulatory societies such as *ekpe* in contemporary times have weakened as members of these institutions get involved in

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<sup>146</sup> Ruel (n 98) 241; Kah (n 137) 56-54.

<sup>147</sup> *ibid.*

<sup>148</sup> Ruel (n 98), 241.

<sup>149</sup> *ibid* 235. See also Hackett (n 144) 35.

<sup>150</sup> Ruel (n 98) 249.

<sup>151</sup> *ibid* 236.

<sup>152</sup> *ibid* 235-240.



politics to promote personal ambition rather than community interest.<sup>153</sup> This is more so in the urban areas where in addition, through the influence of Christianity and modernisation, regulatory societies are being portrayed as atheistic and moribund institutions which should be abolished.<sup>154</sup> Yet, as Henry Kah reminds us, regulatory institutions played an important role in traditional governance and continue to do so, albeit with limited influence and their importance should not be undermined by the transplantation of Western orientated institutions.<sup>155</sup> Because regulatory bodies had a value which contributed to the orderliness of society, it is worth examining (although not uncritically) their potential contribution to modern governance structures.<sup>156</sup> *Ekpe* and similar institutions in the Grassfield regions continue to have significant influence on the members of these institutions.<sup>157</sup>

With regards to Cameroon, in view of executive disregard for court orders as seen in Chapter 4, the enforcement role of regulatory societies could be informative. From one perspective and perhaps depending on the level of the executive authority in question, a neo-traditional regulatory society operating within the geographical jurisdiction in question may be empowered to take the matter up with the immediate hierarchical superior of the defiant authority and utilise public pressure to exact compliance. It may be difficult to envisage how a traditional community organisation can exert pressure on an executive authority who, in effect, is the representative of the State. It is almost like pitting a vulnerable indigenous community against the powerful State. Two responses are possible here.

Firstly, the point is not that such regulatory bodies or traditional associations should be reproduced entirely. A community organisation that can take on an executive authority in

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<sup>153</sup> Kah (n 137) 66.

<sup>154</sup> Hackett (n 144) 182; Kah (n 137) 65-66.

<sup>155</sup> Kah (n 137) 52-53, 67-68.

<sup>156</sup> *ibid* 67-68.

<sup>157</sup> It is worth mentioning that, membership of the institutions is not limited to those resident in the rural areas. *Ekpe* for instance has branches all over Cameroon and abroad. See <[http://ekpe.org/heritage/ekpe\\_celebration.html](http://ekpe.org/heritage/ekpe_celebration.html)>.

this way has to be ‘actualised and strategically reinvented’ (hence neo-traditional)<sup>158</sup> to render it beneficial for that purpose. This can involve slightly altering its composition and operational mechanisms without taking away the essence of that organisation – being grounded in the community. Secondly, by maintaining that community dimension, the organisation can be self-emboldened by the perceived need of its members to defend the interest of the community. The failure to release an unlawfully detained person, also affects other members of the community in that a similar incident can occur to them. By pressing forward to obtain a release pursuant to a court order, the community also preserves its future interest. As Mahmood Mamdani and Julia Eckert assert, the power of community engagement cannot be underestimated.<sup>159</sup> In Australia, as an innovative mechanism to improve the criminal justice system in indigenous communities, neo-traditional institutions, such as Community Justice Panels or Elders Panels, were created.<sup>160</sup> These institutions are composed of elders and respected persons of the community including a member of the judiciary. Annette Hennessey asserts that one aspect which has significantly influenced the success of the institutions is the fact that it is composed of elders of the community who can direct the institutions.<sup>161</sup> Similarly, Eckert argues that the *Shiv Sena* which developed in Mumbai originally as neo-traditional institutions to provide security and basic services for the communities (in the context of inadequate government involvement) derived their influence from their connection with the community.<sup>162</sup> Thus, in Cameroon, community organisations can be similarly created and empowered. In addition, subsequent transformations and evolution can provide further scope for enhancing the clout of such organisations so that they can in conjunction with other institutions, assist in submitting executive authorities to the rule of law.<sup>163</sup> The

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<sup>158</sup> Franz & Keebert von Benda-Beckman, ‘Change and Continuity in Plural Legal Orders’ (2006) 53-54 *Journal of Legal Pluralism and Unofficial Law* 1, 8.

<sup>159</sup> Mahmood Mamdani, ‘Social Movements and Constitutionalism: The African Context’ in Douglas Greenberg et al (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993) 177- 178; Julia Eckert, ‘Urban Governance and Legal Pluralism in Mumbai’ (2004) 50 *Journal of Legal Pluralism* 29.

<sup>160</sup> Annette Hennessey, ‘Indigenous Sentencing Practices in Australia’ International Society for the Reform of the Criminal Law Conference, Brisbane, 2006) <[www.isrcl.org/Papers/2006/Hennessey.pdf](http://www.isrcl.org/Papers/2006/Hennessey.pdf)> accessed 12 January 2012.

<sup>161</sup> Hennessey (n 160) 11.

<sup>162</sup> Eckert (n 159) 32, 34.

<sup>163</sup> The *Shiv Sena* subsequently developed into a very influential political organisation with clout to demand concessions from the government. Eckert (n 159) 32, 34.

*Kgotla* in Botswana provide such opportunities where grievances of the community can be channelled to a district commissioner through a village development committee.<sup>164</sup>

In Cameroon, alternatively, the value of such traditional regulatory bodies to the enforcement of judicial decisions may inform the establishment of equivalent modern institutions to enhance judicial power. It could have a special mandate to deal with the problem of executive disregard for court orders which as demonstrated in Chapter 4, is adversely affecting the exercise of CPR. It may be argued that jurisdiction to deal with such matters is implicit in the mandate of the National Commission on Human Rights and Freedoms (NCHRF).<sup>165</sup> Yet, the fact that the problem has persisted since the establishment of the NCHRF in 1990 (and its reformation in 2004) may be indicative of the incompetence of the NCHRF with regard to promoting the rule of law. Executive disregard for court orders is a serious predicament for a number of reasons including undermining the rule of law and perpetuating the violation of CPR. These are very significant issues that strike at the fabric of society and should be addressed by very stringent and innovative mechanisms including the creation of a special unit or regulatory body specifically vested with powers in that respect.<sup>166</sup>

The above analysis is an overview of some indigenous values, the potential of which obviously should not be exaggerated. Yet, they demonstrate that some indigenous customs and institutions can be utilised as models to develop or be incorporated into the modern institutional framework for CPR enforcement. Given that they have been able to regulate indigenous communities and presumably these communities are more familiar with those practices it is important to give them more consideration. Efforts should therefore be geared towards seeking ways of integrating the positive features from

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<sup>164</sup> Ohlson et al (n 129) 218; Osei-Hwedie (n 129) 120-121.

<sup>165</sup> Law No. 2004/016 of 22 July 2004 on the National Commission on Human Rights and Freedoms (NCHRF), s 2, states that the NCHRF shall be charged with the protection and promotion of human rights and freedoms. In that regard, it is mandated to receive all denunciations relating to violations, conduct enquiries, carry out necessary investigations into alleged violations and study all matters relating to the protection and promotion of human rights.

<sup>166</sup> I have argued elsewhere with regard to executive disrespect for habeas corpus orders that mechanisms to address that problem should include fines and imprisonment of such defiant executive authorities. See Laura-Stella Enonchong, 'Habeas Corpus under the New Criminal Procedure Code of Cameroon: Progress or Status Quo?' (2013) 58(1) *Journal of African Law* (forthcoming).

indigenous customs and institutions and those of the French and British colonial heritage. A possible approach to achieving that objective is considered below.

### **3. CONTEXTUALISING CONSTITUTIONALISM IN CAMEROON: THE OPTIMAL INTEGRATIVE APPROACH.**

#### **3.1. The Meaning of OIA**

Contextualising constitutionalism in Cameroon may be a fascinating project if constitutional engineers have to grapple with two Western constitutional models as well as indigenous customs and institutions. The Optimal Integrative Approach proposes a process whereby all these systems are taken into account. In essence, the approach is one that seeks to enhance the realisation of CPR by ensuring that given Cameroon's legally pluralistic nature, the best possible solution is achieved in constitutional engineering by synthesising the positive features of the three existing legal orders.

The conceptual underpinning of 'integration' makes OIA reify Cameroon's distinctive pluralism and what that condition of pluralism can imply in terms of improving outcomes for the protection and enhancement of CPR in Cameroon. OIA recognises the incompleteness of various constitutional models and the inadequacy of relying on one normative order to the exclusion of others. One model alone, as has been demonstrated already (in terms of the development and application of the French colonial legacy in Cameroon) may not be sufficient to develop a framework that offers adequate protection for CPR in Cameroon. Similarly, despite the assertion that Commonwealth African states have a better fundamental rights record due in part to the positive values attributed to that system, it still is not sufficient. The British colonial legacy may be a better option than the French, yet there is need to look beyond that. Again, indigenous customs and institutions have their own specific potential to contribute to the development of a more robust system. Yet, they are not without reproach neither can they sufficiently deal with the CPR problems of contemporary Cameroon.

OIA is not only focused on integration. At its core, is the concept of 'optimal', which simply implies the best possible option. The driving force behind integration is the

objective to secure the best possible solution to addressing particular concerns on mechanisms for enhancing CPR. Thus, selection of principles, institutional features and techniques should not be done in a random manner. The rationale for any synthesis process should be premised on the assumption that the outcome would produce the best solution that can deal with a CPR problem, than would be obtained under the uncritical application of a single constitutional model. Failure to give adequate recognition to the importance of outcome may lead to a situation of integration for the sake of integration. Such an approach only contextualises constitutionalism to the extent that it gives recognition to the existing normative orders - the lived experiences of the people of Cameroon. However, in the absence of a further focus on improving the CPR situation of Cameroonians, integration fails to be a useful process. In certain respects, it may even be worse than reliance on a single constitutional model.

Such a situation, it may be argued is already apparent under the application of the Criminal Procedure Code (CPC). The CPC, which was promulgated in 2006, came into force in 2007 and has as a major characteristic the harmonisation of some features of the common law and French civil law criminal procedure.<sup>167</sup> Yet, one of the weaknesses of the CPC is that attempts at harmonisation failed to take into account the need to ensure the best possible solution given the prevailing circumstances in the country. As a result, some attempts to improve the rights of the defence through the incorporation of common law principles appear to provide scope for executive manipulation. The provision on *nolle prosequi* for instance vests the Minister of Justice with discretion to discontinue prosecution at any stage in the trial before judgment is delivered if the continuance of a trial would seriously imperil social interest or public order.<sup>168</sup> That power is exercised by the Minister through the *Procureur Général* of a Court of Appeal. *Nolle prosequi* may be advantageous from the point of view of the defence especially where they are being prosecuted for malicious reasons (as can happen for political purposes). However, the wide discretion and executive influence potentially undermine the advantage that may accrue to the defence.

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<sup>167</sup> For instance it applies elements of the adversarial process and the use of a *juge d'instruction* (a French concept) in criminal investigations. The *juge d'instruction* was described in ch 4, s 2.1 at 155.

<sup>168</sup> CPC, s 64(1).

Further, *nolle prosequi* can be used to perpetuate injustice to a victim whose rights have been violated, on the basis that prosecution of a violator can undermine public order. This is a potent weapon which can be used by the Minister to shield executive authorities or other cronies from prosecution. Social interest and public order are terms with subjective interpretations and in particular, in the case of Cameroon, the mere articulation of opposition to the government may be sufficient to amount to a disturbance of public order.<sup>169</sup> Where to draw the line and balance the interest of an individual against public order or social interest is not clear. By vesting such broad powers under undefined circumstances to an executive authority, it provides scope for utilising the *nolle prosequi* for political reasons. Moreover, the decision of the Minister is not subject to review as such, an accused person may walk free despite having violated another's CPR. Even though prosecution can be reinstituted at any time after that 'when it becomes necessary',<sup>170</sup> this is perhaps more likely where it is in the interest of the government rather than a victim or even public order. The point therefore is that, integration should not be a random selection of devices which can be manipulated to achieve dubious ends.

The OIA can offer a pragmatic framework for addressing the CPR concerns in Cameroon in a more productive way than has been achieved through the predominant application of the French colonial legacy. Historical developments of that system in Cameroon have paid little attention to how that system has actually been applied to impact on those rights. In the absence of that fundamental consideration, constitutional amendments have more often than not produced features which have further undermined the exercise of CPR in Cameroon.

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<sup>169</sup> See for instance Stéphane Tchakam, 'Maurice Kamto Interdit de Conférence de Presse', *Le Jour* (Yaoundé, 25 Jan 2012) <[www.quotidienlejour.com/actualites/politiques/8768](http://www.quotidienlejour.com/actualites/politiques/8768). Last accessed 25 January 2012>; where a former government Minister was prohibited from organising a press conference to explain the reasons for his resignation from the government. According to the administrative order (Arrêté No. 001/A/JO6.05/SP) prohibiting the conference, it was a measure to safeguard public order although as the Minister later explained through alternative avenues, his resignation was prompted by his dissatisfaction with government inertia, tribalism and the level of corruption amongst government officials and failure of the leadership to impose adequate sanctions. That incident was discussed in ch 3, s 2.2.2 at 125-126. See also Charles Fombad, 'Freedom of Expression in the Cameroonian Democratic Transition' (1995) 33(2) *Journal of Modern African Studies* 211.

<sup>170</sup> CPC, s 64(4).

## **3.2. Some Propositions Relating to the Application of OIA**

The potential for OIA to attain the ‘optimal’ goal can be enhanced if certain factors are taken into account. In consideration of the caveat that OIA is not presented here as a fully developed framework for integration, only a few propositions will be discussed at this point. They include adaptability, progressivism and pragmatism.

### ***3.2.1. Adaptability***

OIA as an approach rather than a model has the advantage of adaptability. That quality will be useful in determining the extent or level of integration necessary at any particular time because it may be impossible and perhaps impracticable to be prescriptive on the level or extent of integration to be applied at all times. The level and extent of integration should be determined by such considerations as the intended objective (rights realisation) and the prevailing circumstances. This can provide a flexible situation which allows for the development of a framework that takes into account how well that framework can best possibly address CPR concerns given the prevailing circumstances. That is not to say that the basic principles of constitutionalism would be offset by such flexibility. Rather, principles of constitutionalism continue to underlie any initiative on constitutional change geared at enhancing the rights. However, that flexibility is important because as has been noted, the basic principles of constitutionalism have to be applied taken into consideration the context in which they are applied. Given that context in itself is not fixed and immutable, an integrative approach can be advantageous from the perspective that its flexibility accommodates changing circumstances and ensures that the level and extent of integration provides the best possible solutions under given circumstances. An example was demonstrated in the process of drafting the interim constitution of South Africa, where ‘fluid transitional mechanisms’ were established to address the prevailing political tension between the apartheid regime and the revolutionary movement.<sup>171</sup> According to Heinz Klug, the transitional mechanisms provided the opportunity for

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<sup>171</sup> Heinz Klug, ‘South Africa’s Experience in Constitution Building’ in Caroline Morris, Jonathan Boston & Petra Butler (eds) *Reconstituting the Constitution* (Springer 2011) 53.

conflicting parties to negotiate and develop specific institutional and substantive elements, of acceptable understanding of alternative constitutional principles.<sup>172</sup>

It is suggested that in the case of Cameroon, OIA should therefore take into account the dynamic nature of society which may require constant reinforcement of processes and institutions to reflect the changing needs of society. That flexibility is particularly important with respect to incorporating traditional institutions into modern governance as it will allow for the possibility of recapturing those institutions rather than unnecessarily reproducing them.

### **3.2.2. *Progressivism***

A further proposition is for OIA to be progressive. Progressivism as used in this context simply refers to the idea of developing integrative solutions aimed at achieving *positive* outcomes (rights realisation). It requires that there should be scope for evaluating solutions in terms of the extent to which they are achieving the goals for which they were established. Samuel Nolutshungu notes that *progressive* approaches to the development of institutions and processes grounded in both Western and indigenous cultures provide innovative ways of promoting constitutionalism in Africa.<sup>173</sup> The proposition for OIA to be progressive in orientation requires that it be concerned with *continually* improving on the constitutional system to ensure that the best possible solution is being applied at every point in time. Thus, if an integrated separation of powers system was established to mitigate the concentration of governmental powers and that has not occurred and an outcome has been the continued violation of CPR, it should be possible to make an assessment that the particular solution is inadequate and in need of reform.<sup>174</sup>

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<sup>172</sup> *ibid* 53-54.

<sup>173</sup> Samuel Nolutshungu, 'Constitutionalism in Africa: Some Conclusions' in Greenberg et al (eds) *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993) 371.

<sup>174</sup> The duty to make an assessment could be vested in a specialised and independent organ such as a human rights consultative committee.



Arguably, most governments breach CPR from time to time. These may be isolated incidents which do not necessarily imply that the system is failing. With an effectively constructed constitutional system, such isolated incidents should be dealt with to prevent further breaches. However, violations that occur at a systemic level are indicative of the inadequacy of a system. The ability to make an assessment of the success or failure of any solution developed through OIA is fundamental to the purpose of contextualising constitutionalism. It is through such assessments that reforms can be initiated with the aim of a progressive development of a contextual solution. If one cannot concede that a solution is failing and needs to be reconsidered, then there is little rationale for investing efforts to design solutions that can be more useful in a particular context. A wholesale application of the basic tenets of constitutionalism may be considered in lieu of contextualisation. But of course, as already argued, context is important and the merits of contextual solutions can be appreciated more through an assessment of their performance. A similar view is expressed by Hastings Okoth-Ogendo and Prempeh for whom constitutionalism in Africa is on a trajectory that requires an assessment of successes and failures.<sup>175</sup> Based on the assessments, they assert constitutionalism in Africa will require continuous correction and progressive reform.<sup>176</sup>

An-Na'im on the contrary is averse to assessments which lead to a conclusion or an observation that constitutionalism is failing or has failed. Through what he refers to as the 'incremental success' thesis, constitutional experiments in Africa should be seen as experiencing varying degrees of success rather than that they might be, or are failing.<sup>177</sup> According to An-Na'im incremental success or progressive development of constitutionalism are necessary outcomes of the contextualisation process as Western constitutional systems experienced similar trajectories in the development of their approaches to constitutionalism.<sup>178</sup> Ironically, he admits that the process of adaptation and indigenisation necessarily entails encounters with difficulties which can only be

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<sup>175</sup> Okoth-Ogendo, 'Constitutions without Constitutionalism: Reflections on an African Political Paradox' in Greenberg et al (eds) *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993) 80; Prempeh, 'Africa's "Constitutionalism Revival"' (n 129)505-506.

<sup>176</sup> *ibid.*

<sup>177</sup> An-Na'im (n 7) 8, 98.

<sup>178</sup> *ibid.*

successfully addressed through *evaluation* of practical experiences overtime. The lessons learnt or insights gained into these practical experiences provide positive directives for the development and implementation of further strategies that better secure constitutionalism.<sup>179</sup>

An-Na'im's approach is controversial and contradictory in that it advocates notions of progressive constitutionalism yet it rejects any observation that constitutionalism is failing or has failed. If all contextualised approaches were seen as experiencing varying degrees of success, what would be the impetus to take decisive measures to develop more robust features of constitutionalism in particular contexts? From An-Na'im's perspective, it would perhaps be inappropriate to state that the constitutional system in Cameroon has failed or is failing and therefore the problems with CPR cannot be attributed in part to it. Such a view may lead to adopting an approach which can overlook and by so doing accommodate deliberate attempts by governments to subvert constitutional developments and the exercise of CPR.<sup>180</sup> If An-Na'im's view is adhered to, constitutionalism in Africa is likely to fall into a situation which Joseph Oloka-Onyango refers to as 'political transitions without attendant fundamental political change'.<sup>181</sup> In the case of Cameroon as the preceding chapters have demonstrated, the supposed transition to democratic governance in 1990 and the purported constitutional reforms in 1996 geared at establishing a new era for constitutionalism and CPR, did not significantly improve on the institutional framework for their enforcement.

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<sup>179</sup> *ibid* 161-173.

<sup>180</sup> In Rwanda the modernised *gacaca* courts which were created by the state to try some of the perpetrators of genocide have faced enormous problems some of which emanate from the failure to adequately blend traditional justice mechanisms with modern judicial processes. A consequence has been loss of public support and faith in the *gacaca* process and therefore its ability to bring about the much desired peace and reconciliation in Rwanda. Yet, the government is adamant to criticisms of the *gacaca* process and continues to idealise it whereas an open assessment and acceptance of its shortcomings can engender a re-conceptualisation to maximise the benefits of the traditional *gacaca* process and modern judicial processes with regards to peace and reconciliation in Rwanda. See Allison Corey & Sandra Joireman, 'Retributive Justice: The *Gacaca* Courts in Rwanda' (2004) 103 *African Affairs* 73; Christopher Le Mon, 'Rwanda's Troubled *Gacaca* Courts' (2007) 2(14) *Human Rights Brief* 16.

<sup>181</sup> Joseph Oloka-Onyango, 'Towards the Future: Confronting Myriad Constitutional Challenges' in J. Oloka-Onyango (ed) *Constitutionalism in Africa: Creating Opportunities Facing Challenges* (Fountain Publishers 2001) 342.

### ***3.2.3. Pragmatism***

The requirement of progressivism also appeals to the need for pragmatism. Pragmatism should be considered important because constitutionalism is also about how principles are applied in practice to achieve the aim of constitutionalism. This is the more so with contextualisation which entails the development of contextual solutions taking account of the specific circumstances of the context in which they will be applied. Contextualisation is unlikely to effectively improve on a constitutional system if that connection with the actual realities on the ground are omitted or ignored. Moreover, circumstances do change requiring readjustments and innovative pathways in order to reflect those changes. But those should always be strictly based on the basic tenets of constitutionalism as cumulatively they aim to improve the rights situation.

Recognition of pragmatism here should be strictly for the purpose of ensuring that solutions adopted have the greatest possibility of ameliorating the CPR situation. It should not be supported where its use is to justify departures from the basic tenets of constitutionalism or to undermine the capacity to attain the objective of contextualisation. Because OIA aims to achieve the best possible solution, a deviation from the basic tenets of constitutionalism which leads to adverse consequences for CPR cannot be justified on pragmatic grounds.

Pragmatism also entails experimentation with various integrative possibilities (informed by the basic tenets of constitutionalism) with the objective of securing the best possible solution for the enforcement of CPR. However, it implies openness to comparative experiences even beyond Cameroon. That is not to suggest a direct transplantation of experiences or methods, otherwise it may imply returning to the same position that OIA is attempting to deviate from. Nevertheless, comparative experiences are important within the framework of OIA in order to ensure that informed choices are made by learning from what may have worked or failed in other circumstances. Kim Scheppele refers to this dichotomous process of recognising potential negative and positive

influence as aspirational and aversive constitutionalism.<sup>182</sup> According to Scheppele, aspirational constitutionalism refers to a country's commitment to progressive constitutional developments which represent the aspirations and goals of a society. This commitment or progressive aspiration is enhanced by further examination of positive examples of constitutional precepts and practices from other countries.<sup>183</sup> While aversive constitutionalism refers to a process of consciously averting negative influences that have the potential to inhibit or circumvent the development of constitutionalism. The aversion process takes into account the past experiences of the particular country in question and attempts to avoid replicating the negative elements that affected its constitutional development. Moreover, negative influences from outside models and experiences are given due consideration as examples of what to avoid.<sup>184</sup>

Evaluating the reasons for successes and failures of solutions in other jurisdictions is likely to provide an even more enlightened perspective on how a particular integrative solution might be constructed (or not) to achieve the best possible outcome in the context of Cameroon. By way of illustration, in Malawi it has been argued that constitutional experimentation with the concept of *ubuntu* has yielded differing outcomes. Under Kamuzu Banda's regime, although some recognition was given to the concept of *ubuntu*, some of its fundamental principles such as those which emphasise humanity, reciprocity and caring for others, were not seriously considered as having a bearing on the foundation of governance.<sup>185</sup> That, it has been argued, partially accounted for Banda's oppressive regime.<sup>186</sup> On the other hand, Bakili Muluzi's government paid great attention to the philosophical underpinnings of *ubuntu* and in fact expressed that through periodic benevolent donations of basic subsistence material to sections of the population.<sup>187</sup> However, that was not usually backed by democratic principles of transparency and

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<sup>182</sup> Kim Scheppele, 'Aspirational and Aversive Constitutionalism: The Case for Studying Cross-Constitutional Influences Through Negative Models' (2003) 1(2) *International Journal of Constitutional Law* 296, 299-301.

<sup>183</sup> *ibid* 209.

<sup>184</sup> *ibid* 300.

<sup>185</sup> Richard Tambulasi & Happy Kayuni, 'Can African Feet Divorce Western Shoes? The Case of *Ubuntu* and Democratic Governance in Malawi' (2005) 14(2) *Nordic Journal of African Studies* 147, 148- 150.

<sup>186</sup> *ibid* 148-150.

<sup>187</sup> *ibid* 150-153.

accountability and thereby facilitated the development of a corrupt regime.<sup>188</sup> Though sometimes such trends and conclusions may be overstated, what that observation demonstrates is that in the construction of any integrative solution, an optimal outcome may not be achieved if essential features which underlie a particular system are undermined or ignored. It points to the relevance of comparison of experiences elsewhere to developing more informed pragmatic choices.<sup>189</sup>

The South African Constitution embodies that dual effort. On the one hand, to translate the positive aspirations informed by cross-constitutional influences from legal traditions such as the common law (for instance the Bill of Rights borrows significantly from the Canadian and American Constitutions), civil law (the bill of Rights also bears influence from the German Basic Law) and Roman-Dutch Law.<sup>190</sup> On the other hand it has consciously averted its past model based on a system of apartheid that primarily denied fundamental human rights to the majority.<sup>191</sup> In addition significant recognition has been given to the value of cultural practices rooted in indigenous communities.<sup>192</sup> Although Dennis Davis regrets that sufficient reference is not being made to customary law, the courts have continued to emphasise that the Constitution must be interpreted with due regard to usages and traditions.<sup>193</sup>

The preceding arguments are not meant to discount the importance of public participation in constitutional engineering. The decision on how to achieve the best possible solution is not something to be left to a single individual or institution. It is recognised here that, constitutional engineering should involve broad based participation from individuals in the society, politicians, policy makers, NGOs etc. Different avenues will normally be

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<sup>188</sup> *ibid* 156-157.

<sup>189</sup> Like the flexibility aspect, this is also particularly important with respect to incorporating traditional institutions and principles into modern governance. Being a relatively novel paradigm, learning from experiences elsewhere should not only be an aspect to consider but a necessary one.

<sup>190</sup> Dennis M. Davis, 'Constitutional Borrowing: The Influence of Legal Culture and Local History in the Reconstitution of Comparative Influence- The South African Experience' (2003) 1(2) *International Journal of Constitutional Law* 181. See also Karl Klare, 'Legal Culture and Transformative Constitutionalism' (1997) 13 *South African Journal of Human Rights* 146.

<sup>191</sup> Scheppelle (n 180) 303-304.

<sup>192</sup> T. Bennett, *Customary Law in South Africa* (Juta & Co Ltd 2004).

<sup>193</sup> *S v Makanyane* 1995 (3) SALR 391 & *S v Zuma* 1995(2) SALR 642 [15] (CC) cited in Davis, (n 190) 193 esp n 48.

created for participants to express their opinion or aspirations with regards to the content of the constitution. The constitutional drafters can then be guided by the OIA to give the best expression to the wishes of the people. The latter can also have the last say in affirming or rejecting a draft constitution for instance through a referendum. That participatory approach was used in South Africa and is more widely applied in contemporary constitutional engineering as can be seen in the case of Ghana, Tanzania and Zambia which are currently undertaking constitutional review. In South Africa, the drafting of the 1996 Constitution was preceded by broad based participation facilitated by the Constitutional Assembly and the Constitutional Committee appointed by the former.<sup>194</sup> Themed committees were established to enhance public participation by collecting views, ideas and opinions from various sectors of the population.<sup>195</sup> Other avenues included a Constitutional Education Programme, Public Meeting Programme, electronic submissions, newsletters and public debates and discussions to explain provisions of the draft constitution.<sup>196</sup> According to Klug, a technical refinement committee worked throughout the process to ensure consistency in the draft as it developed and that it was written in plain language that could be understood by ordinary citizens.<sup>197</sup> The views collected from the public provided a background for the drafters to explore ‘potentially sustainable alternatives’ to meet the aspirations of the people.<sup>198</sup>

With regard to Cameroon, while recognising the importance of people sovereignty, the OIA can be useful in developing contextualised solutions for the realisation of CPR, taking into account its historical development, contemporary circumstances and learning from experiences of other countries.

## CONCLUSION

This chapter has proposed the idea of contextualising constitutionalism as a way forward to improving the prospects for realising CPR in Cameroon. It has drawn on the literature

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<sup>194</sup> Klug (n 171) 60-62.

<sup>195</sup> *ibid* 60.

<sup>196</sup> *ibid*.

<sup>197</sup> *ibid*.

<sup>198</sup> *ibid* 72.

on constitutionalism in Africa which suggests that African countries can usefully draw on the specific features of their countries and their indigenous mechanisms of government to reinforce features of Western constitutionalism being applied in their countries.

The chapter has specifically identified, in the Cameroon context, the British legacy of judicial independence, constitutional review and to a limited extent constraints on executive power; the French colonial legacy of additional separation of powers and indigenous systems of traditional authority and ‘judicial’ regulatory processes as examples of features that can be applied to contextualise constitutionalism.

Obviously, there is need for further research to determine the exact extent of synthesis that might be required to develop contextualised mechanisms in Cameroon. Nevertheless, as Botswana has demonstrated such proposals are not idealistic and can be achieved in practice. With respect to Cameroon, the OIA proposed here is a preliminary step towards achieving the objective of contextualisation for better protection and enhancement of CPR. Through OIA those elements identified can be used to strengthen and compliment each other with the potential outcome being the development of contextual and robust responses to CPR problems in Cameroon. This is not to imply that by adopting such an approach CPR will never be subject to infringement. Nonetheless, if the positive features of these normative orders are fused in ways that make them more than just constitutional proclamations, they are likely to enhance the enforcement of CPR in Cameroon.

# CONCLUSION

## 1. INTRODUCTION

This thesis has identified and explained the possible source of the problem of systemic violation of CPR in Cameroon. It has also endeavoured to identify a possible solution to that problem. As mentioned in the Introduction to this thesis and in Chapters 2 to 5, the government's record in the protection of CPR remains poor. International and domestic human rights organisations maintain that CPR violations including, arbitrary arrests and detention, torture, extrajudicial killings, forced disappearances, denial of political freedoms and democratic rights have persisted.<sup>1</sup> The government introduced liberal reforms to enhance the realisation of CPR in Cameroon. These include the enactment of Liberty Laws in the 1990s to enhance political and democratic freedoms<sup>2</sup> and the promulgation of the 1996 Constitution purportedly to establish a 'balance and separation of powers' and a commitment to the 'vigorous defence' of CPR.<sup>3</sup> So why has the problem of systemic violation of CPR persisted?

The thesis has argued that, that problem can be attributed in part to the predominant influence of the French colonial constitutional legacy, in Cameroon's bijural legal system. Despite having inherited the British common law and the French civil law, superimposed on indigenous customs and institutions, constitutional developments in Cameroon have been predominantly influenced by the French colonial legacy. That legacy, this thesis has argued, is not sufficiently supportive of the institutional features

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<sup>1</sup> United States Department of State, Human Rights Reports on Cameroon for 2011, 2010, 2009 and 2008 which can be accessed at < [www.state.gov/j/drl/rls/hrrpt/](http://www.state.gov/j/drl/rls/hrrpt/)>; Freedom House, 'Freedom in the World 2011: Cameroon' <[www.freedomhouse.org/report/freedom-world/2011/cameroon](http://www.freedomhouse.org/report/freedom-world/2011/cameroon)> accessed 20 July 2012; Committee to Protect Journalists, 'Attacks on the Press in 2011: Cameroon' (21 February 2012) <<http://cpj.org/africa/cameroon/>>; Observatoires Nationale des Droits de L'Homme, 'Rapport de L'Observatoires National des Droits de L'Homme 2008-2010', 21-23, <[www.ccf-terresolidaire.org/e\\_upload/pdf](http://www.ccf-terresolidaire.org/e_upload/pdf)>; Amnesty International (AI), 'Impunity Underpins Persistent Abuse' (29 January 2009) <[www.amnesty.org/en/library/info/AFR17/001/2009](http://www.amnesty.org/en/library/info/AFR17/001/2009)> accessed 15 May 2012.

<sup>2</sup> Law No. 90/052 on the Freedom of Social Communication (FSC); Law No. 90/053 on Freedom of Association; Law No. 90/055 on Public Meetings, Processions and Parades; Law No. 90-056 on Political Parties, all promulgated on 19 December 1990.

<sup>3</sup> Augustin K. Kouomegni, 'Minister of Communication's Introductory Note to the 1996 Constitutional Amendment' *Fundamental Legal Texts* (vol 1, National Printing Press 1996).



relevant for the protection of CPR. And the particular way in which it has been developed and applied in post-independent Cameroon has further entrenched its weaknesses such that despite the purported legislative and constitutional reforms, CPR are not sufficiently protected.

The principal arguments of this thesis have been developed in six main chapters, a summary of which is provided below.

## **2. THE CONSTITUTIONAL SYSTEM AND CPR IN CAMEROON**

In Chapter 1, the thesis draws on the concept of constitutionalism in order to examine the extent to which the constitutional system contributes to the CPR problem in Cameroon, at a systemic level. Although as discussed in that chapter, there are different conceptions of constitutionalism, there is a general understanding that it is concerned with the organisation of governmental powers, their exercise and how citizens interact with governmental powers and institutions to achieve certain objectives, of which the protection of fundamental rights (including CPR) has become a defining one.<sup>4</sup> That understanding presupposes at a minimum that a good structure for the protection and enhancement of CPR should have an effective separation of powers and checks and balances system, an independent judiciary and effective mechanisms for judicial review of legislative and administrative acts.

Additionally, in Chapter 1 it was submitted that in designing those institutional attributes, it is important that constitutional engineers should take into account the relevant socio-political, economic and historical circumstances of the context in which a constitution is to apply. That is a particularly important consideration with respect to Africa where Western models of constitutionalism were transplanted to Africa which had different socio-political, economic and historical dynamics from the West.<sup>5</sup> Scholars of constitutionalism in Africa have argued that the omission to take account of those

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<sup>4</sup> See ch 1 at 20-23.

<sup>5</sup> See ch 1 at 30-32.

peculiar circumstances led to the transplantation of constitutional structures which were not sufficiently robust to deal with the prevailing circumstances in Africa.<sup>6</sup>

Applying that understanding of constitutionalism described above, the minimum core elements of a good constitutional structure and the relevance of the contextual dimension, this thesis analysed the constitutional structure of Cameroon in Chapters 2 to 5. That structure was deemed inadequate for the protection of CPR, with respect to its system of separation of powers and checks and balances, judicial independence and judicial review.

In Chapter 2, the thesis discussed the constitutional evolution of Cameroon, from the period of British and French colonial rule to immediate post-independence. When the former British and French territories became independent and subsequently reunited to form Cameroon as it is known today, the constitutional system adopted reflected primarily the French civil law heritage. Subsequent constitutional developments did not take into account the specific circumstances of Cameroon such as its legal pluralism, relatively young democracy, and other socioeconomic factors such as poverty, underdevelopment and ethnic diversity. As such, the immediate post independence Constitutions of 1961 and 1972 did not provide effective mechanisms for the protection of CPR. Instead, they facilitated the development of an authoritarian regime. The 1996 Constitution was adopted against that background to provide a more suitable framework for the protection of CPR. However, the thesis has argued that because it continued to be significantly influenced by the features of its French civil law heritage, the constitutional structure remains inadequate for the effective protection and enhancement of CPR.

Thus, as demonstrated in Chapter 3, the institutional design for the separation of powers and checks and balances in the 1996 Constitution continues to ensure that the President is vested with extensive powers without corresponding checks and balances to limit their exercise. That deficiency has facilitated the arbitrary use of powers and the subordination of other institutions which should otherwise act as checks on the exercise of presidential powers. The separation of powers model has confined to a large extent the powers

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<sup>6</sup> *ibid.*

conferred on other institutions and their ability to limit executive and in particular presidential powers.

That is the case with the judiciary whose capacity to enforce CPR is undermined *inter alia*, by lack of independence. In Chapter 4, it was demonstrated that, the executive, in particular the President, exercises substantial control over the judiciary through the power of appointment, promotion, transfer, discipline and remuneration of judges. Even the financing and administration of the judiciary are left in the unfettered control of the executive. That position, it was argued undermines the individual independence of the judges and the institutional independence of the judiciary to the point that, the courts are not always in a position to assertively sanction executive violations of CPR. Even in the instances where some judges overcome their individual or institutional constraints to rule against executive officials who violate CPR, the general status of the judiciary as subordinate to the executive makes it difficult for their decisions to be enforced. That has facilitated the development of a culture of executive disregard for court decisions in Cameroon.

A further weakness in the constitutional structure of Cameroon which makes the protection of CPR more difficult is the limited availability of judicial review. It was argued in Chapter 5 that, the system for the review of the constitutionality of laws is deficient for a number of reasons including the fact that there is no scope for post legislative review and individuals whose rights are likely to be breached do not have standing to challenge the constitutionality of laws. The system has in effect limited the category of persons with standing to the same executive (that is to say, the President) and legislative authorities who would have proposed and voted those potentially rights-infringing laws in the first place. They are therefore unlikely to be inclined to challenge the constitutionality of their own laws. Those weaknesses have combined to undermine the development of a practice of constitutional review in Cameroon. Consequently, legislation such as the so-called Liberty Laws,<sup>7</sup> ELECAM Law<sup>8</sup> and the Penal Code<sup>9</sup>

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<sup>7</sup> (n 2) above.

regulating some CPR considerably circumscribe their exercise without a realistic possibility of any challenge to their constitutionality.

Chapter 5 also examined the extent to which conventional review is practiced in Cameroon as an alternative mechanism for post legislative review. Although article 45 of the Constitution appears to provide scope for the review of national laws for compatibility with international instruments, that practice has not been developed in Cameroon. Therefore, its potentials to enhance the protection of CPR have not been realised.

With respect to administrative review, Chapter 5 demonstrated that the mechanism is also deficient. For, although administrative review is in principle available, in practice it is not an effective mechanism for the protection of CPR. First it is excluded with respect to the category of acts known as *actes de gouvernement* (acts of the government). Secondly, the Supreme Court (which prior to March 2012) was vested with exclusive jurisdiction in that respect is also affected by the wider problem of lack of judicial independence. Thirdly, lengthy court procedures and a culture of delay undermine the capacity of that Court to administer justice in a timely manner. Fourthly, up to now, the problem of distance from Yaoundé (the seat of the Supreme Court) and cost of litigating in that Court undermined its accessibility. However, given that the Lower Administrative Courts have recently been created,<sup>10</sup> the problem of distance has been addressed to some extent. It is also hoped that the problem of delay will be a problem of the past, as the Supreme Court will now be relieved of its original jurisdiction in that respect. Sadly, the other problems remain.

In the light of the weaknesses in the constitutional structure for the protection of CPR as identified in Chapters 2 to 5, the question then is what can be done to enhance the realisation of CPR in Cameroon?

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<sup>8</sup> Law No. 2006/011 of 29 December 2006 to Set up and Lay Down the Organisation and Functioning of Elections Cameroon.

<sup>9</sup> Law No.67/LF/1 of 12 June 1967 Introducing the Cameroonian Penal Code.

<sup>10</sup> Decree No 2012/119 of 15 March 2012 to set up Administrative Courts.

### 3. PROSPECTS FOR THE FUTURE

This thesis has argued that a good constitutional structure would be the starting point to provide Cameroon with a more robust framework to reverse the trend of systemic violation of CPR. However, it must be acknowledged that establishing a robust constitutional system in a nascent and fragile democracy like Cameroon is problematic. As discussed in Chapter 1, democracy and constitutionalism are intertwined.<sup>11</sup> While constitutionalism can provide the institutional and procedural mechanisms to promote democracy, a flourishing democracy can reinforce the constitutional system by enhancing government's accountability and popular participation. In Cameroon, although democratic rights have been provided for and institutions such as the National Electoral Commission (ELECAM) have been established for their promotion, the inadequacy of the constitutional system limits the extent to which democracy can flourish. Although the thesis has not dealt specifically with democracy, through the examination of executive influence on the electoral system and ELECAM in Chapter 3, it can be inferred that the creation of democratic systems, well functioning institutions, a vibrant civil society and a rights respecting government can promote the development of democracy in Cameroon.

It must also be acknowledged that in Cameroon there needs to be a change of leadership or at least a willingness on the part of the leadership to undertake meaningful reforms. Otherwise, a good constitution could be disrespected by a leadership that is not committed to rights enforcement. Nevertheless, establishing a good constitutional structure is an important point at which to commence meaningful reforms in Cameroon.

The thesis has argued that a plausible way of establishing that good constitutional structure is by making more use of the three legal influences in Cameroon (the civil law system, the common law system and indigenous customs and institutions) to contribute to the constitutional arrangements based solely on its French colonial legacy. Drawing from the wider debate on the civil and common law distinction in post-colonial Africa, it was argued in Chapter 6 that, a robust constitution for the protection of CPR in Cameroon can

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<sup>11</sup> See ch 1 at 34-35.

benefit from the British colonial legacy in a number of areas. These include, judicial independence, constitutional review and checks and balances on executive power. In terms of its French colonial legacy, the additional separation of powers between the President and Prime Minister is an attribute which if reinforced by an appropriate checks and balances system, can mitigate the problem of excessive presidential powers discussed in Chapter 3.

The thesis also argued that, some recognition should be given to indigenous customs and institutions which form the lived experiences of people in Cameroon and have the potential to contribute to a good system for the realisation of CPR. As argued in Chapter 6, traditional authorities continue to have a positive influence in their communities and to promote community interest. They can be used at the national level through the creation of a House of Chiefs (as in Botswana and Ghana) to add another dimension to the checks and balances system.<sup>12</sup> Traditional councils and regulatory institutions can be strengthened, so that they can enhance popular participation and serve as additional avenues for accountability of public officials at the local levels. That proposition finds support in contemporary discourse on constitutionalism in Africa which highlights the potential role that autochthonous principles and institutions can play in fostering the development of constitutionalism in Africa.<sup>13</sup> Some countries like Botswana, Ghana and South Africa have already taken the lead in integrating traditional customs and institutions into modern governance.

Drawing from the three different systems raises the question of how to integrate constitutional features from disparate constitutional traditions. Undoubtedly, this may be a complicated task, one which this thesis has identified as requiring further extensive research. However, as a prelude to that, the thesis has preliminarily advanced the Optimal Integrative Approach (OIA) as a possible framework for combining features from each of the normative orders existing in Cameroon. The primary goal of OIA is to ensure that the best possible solution is achieved in constitutional engineering by synthesising some

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<sup>12</sup> See ch 6 at 268-269.

<sup>13</sup> See ch 6 at 246-250.

positive features from the three legal orders. It is not every feature that will be considered suitable for integration. The purpose of OIA is to seek the best possible option through integration where practicable, always however based on the fundamental tenets of constitutionalism as presented in Chapter 1. If adequately constructed, there is optimism that such an approach to constitutional engineering would potentially result in a constitution that takes CPR commitments seriously, establishes robust mechanisms for their protection and enhancement and creates a society where people feel confident to exercise those rights.

## BIBLIOGRAPHY

Ackerman B, 'The Rise of World Constitutionalism' (1997) 83(4) *Virginia Law Review* 771.

— — 'The New Separation of Powers' (2000) 113(3) *Harvard Law Review* 633.

— — 'The Emergency Constitution' (2004) 113 *Yale Law Journal* 1029.

African Commission on Human and People's Rights, 'Concluding Observation and Recommendations on the Second Periodic Report of the Republic of Cameroon' <[achpr.org/English/other/Con\\_Observations/Cameroon/3<sup>rd</sup>\\_rpt\\_pdf](http://achpr.org/English/other/Con_Observations/Cameroon/3<sup>rd</sup>_rpt_pdf)> accessed 12 June 2012.

Adjei C, 'The Comparative Perspective and the Protection of Human Rights à la Française' (1997) 17(2) *Oxford Journal of Legal Studies* 281.

Ahidjo A, 'Contribution to National Construction' (1964) *Paris: Presence Africaine* 23.

Ajayi A and Espie I (eds) *A Thousand Years of West African History* (Ibadan University Press 1965).

Alexander L (ed), *Constitutionalism: Philosophical Foundations* (Cambridge University Press 1998).

All Africa 'Commonwealth Observers on Cameroon Poll: "not credible".' <[www.afrol.com/articles](http://www.afrol.com/articles)> accessed 01 May 2010>.

Allison JF, *A Continental Distinction in the Common Law: A Historical and Comparative Perspective on English Public Law* (Oxford University Press 1996).

Allott A, *Judicial and Legal Systems in Africa* (Butterworths 1962).

Alternatives Cameroun et al, 'The Status of Lesbian, Gay, Bisexual and Transgender Rights in Cameroon: A Shadow Report' (June 2010) <[www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTI\\_Cameroon\\_HRC99.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBTI_Cameroon_HRC99.pdf)> accessed 29 August 2012.

Amnesty International, 'Impunity Underpins Persistent Abuse' (29 January 2009) <[www.amnesty.org/en/library/info/AFR17/001/2009](http://www.amnesty.org/en/library/info/AFR17/001/2009)> accessed 14 May 2012.

— — 'Cameroon Urged to Overhaul Laws Criminalising Gay Relationships' (5 March 2012) <[www.amnesty.org/en/for-media/press-releases/cameroon-urged-overhaul-laws-criminalizing-gay-relationships-2012-03-05](http://www.amnesty.org/en/for-media/press-releases/cameroon-urged-overhaul-laws-criminalizing-gay-relationships-2012-03-05)> accessed 29 August 2012.



Amougou T, *Biyaïsme: Le Cameroun au Piège de la Médiocrité Politique de la Libido Accumulative et de la Décivili* (L'Harmattan 2011).

Andenas M and Fairgrieve D, 'Judicial Independence and Accountability' in Andenas M and Fairgrieve D (eds), *Judicial Independence and Accountability* (British Institute of International and Comparative Law 2006).

Andzong S, 'Justice: Ces Ministres Qui Défient la Cour Suprême' (Yaoundé, 24 October 2012) <[www.cameroon-infonet/stories/0,38449@justice-ces-ministres-qui-defient-la-cour-supreme.html](http://www.cameroon-infonet/stories/0,38449@justice-ces-ministres-qui-defient-la-cour-supreme.html)> accessed 02 November 2012.

Angwafor A, 'The Mankon People- Mimetic Nomads or Bantu?' (1992) 4 *The NUCS Journal* 1.

An-Na'im A, *African Constitutionalism and the Role of Islam* (University of Pennsylvania Press 2006).

— — 'The National Question: Secession and Constitutionalism: The Mediation of Competing Claims to Self-Determination' in Douglas Greenberg et al (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993).

Anyangwe C, *The Cameroonian Judicial System* (CEPER 1987).

— — *The Magistracy and the Bar in Cameroon* (CEPER 1989).

Ardener E, *Coastal Bantu of the Cameroons* (International African Institute 1956).

Arthur J, 'Judicial Review, Democracy and the Special Competency of Judges' in Bellamy R (ed), *Constitutionalism, Democracy and Sovereignty: American and European Perspectives* (Avebury 1996).

Article 19, 'Northern Cameroon: Attacks on Freedom of Expression by Governmental and Traditional Authorities' 1995 <[www.article19.org/data/files/pdfs/publications/cameroon-attacks-on-foe.pdf](http://www.article19.org/data/files/pdfs/publications/cameroon-attacks-on-foe.pdf)> accessed 12 May 2012.

Asiwaju A, 'Law in Africa Borderlands: The Lived Experience of the Yoruba astride the Nigeria-Dahomey Border' in Richard Roberts & Kristin Mann (eds), *Law in Colonial Africa* (Heinemann 1990) 233.

Assemblée Nationale du Cameroun, 'Les Lois: Adoptée' <[www.assembleenationale.cm/index.php?option=com\\_wrapper&Itemid=88](http://www.assembleenationale.cm/index.php?option=com_wrapper&Itemid=88)> accessed 09 September 2012.

Atemengue J, 'Les *Actes de Gouvernement* Sont-ils une Catégorie Juridique? Discussion Autour de leur Origine Française et de leur Réception Camerounaise' (2000) 12 *African Journal of International and Comparative Law* 144.

Aucion L, 'Judicial Review in France: Access of the Individual under French and European Law in the Aftermath of France's Rejection of Bicentennial Reform' (1992) 15(2) *Boston College International and Comparative Law Review* 443.

Awasom N, 'The Reunification Question in Cameroon History: Was the Bride a Reluctant or an Enthusiastic One?' (2000) 47(2) *Africa Today* 90.

Ayah P, 'A Cameroonian Case Study: Executive Presidency versus Parliamentary Executive' (2004) 85(4) *The Parliamentarian: Journal of the Parliaments of the Commonwealth* 318.

Ayittey G, *Africa in Chaos* (St. Martins Press 1999).

Backer LC, 'God(s) Over Constitutions: International and Religious Transnational Constitutionalism in the 21<sup>st</sup> Century' (2008) 27 *Mississippi College Law Review* 101.

— — 'From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems' (2009) 113(3) *Penn State Law Review* 101.

Ball O, 'Torture in Cameroon: Every Morning Just Like Coffee' (Medical Foundation for the Care of Victims of Torture, 2002) <[www.freedomfromtorture.org/document/publication/5387](http://www.freedomfromtorture.org/document/publication/5387)> accessed 20 July 2012.

Balladur E et al, 'Comité de Réflexion et de Proposition sur la Modernisation et Le Rééquilibrage des Institutions de La Ve République, Une Ve République plus Démocratique' (Documentation Française, October 2007) <[www.ladocumentationfrancaise.fr/rapports-publics/074000697/index.shtml](http://www.ladocumentationfrancaise.fr/rapports-publics/074000697/index.shtml)> accessed 12 March 2011.

Bankounda-Mpele F, 'Repenser le Président Africain' (Vii<sup>ème</sup> Congrès Français De Droit Constitutionnel sur la 50<sup>ème</sup> Anniversaire de la Constitution du 4 Octobre 1958, 25-27 September 2008, Paris).

Barber N, 'Prelude to the Separation of Powers' (2001) 60(1) *Cambridge Law Journal* 59.

Barros R, *Constitutionalism and Dictatorship: Pinochet, the Junta and the 1980 Constitution* (Cambridge University Press 2004).

Baxi U, 'Constitutionalism as a Site of State Formative Practices' (2000) 21 *Cardozo Law Review* 1183.

— — ‘Postcolonial Legality’ in Henry Schwartz and Sangeeta Roy (eds), *A Companion to Post Colonial Studies* (Blackwell 2000).

Bayart JF, ‘The Birth of the Ahidjo Regime’ in Richard Joseph (ed), *Gaullist Africa: Cameroon under Ahmadou Ahidjo* (Fourth Dimension Publishers 1978).

— — ‘The Neutralisation of Anglophone Cameroon’ in Richard Joseph (ed), *Gaullist Africa: Cameroon under Ahmadou Ahidjo* (Fourth Dimension Publishers 1978).

— — ‘The Structure of Political Power’ in Richard Joseph (ed), *Gaullist Africa: Cameroon under Ahmadou Ahidjo* (Fourth Dimension Publishers 1978).

— — *The State in Africa: the Politics of the Belly* (Longman 1993).

BBC News Africa, ‘Cameroon Head Blames Opposition’ (28 July 2008) <<http://news.bbc.co.uk/1/hi/world/africa/7267731.stm>> accessed 25 May 2012.

BBC News, ‘Niger Leader Dissolves Parliament’ <<http://news.bbc.co.uk/1/hi/world/africa/8067831.stm>> (UK, 26 May 2009) accessed 29 June 2011.

Beetham D, ‘What Future for Economic and Social Rights’ (1995) 43 *Political Studies Quarterly* 41.

Bell J, *Judiciaries within Europe* (Cambridge University Press 2006).

Bell J, Boyron S & Whittaker S, *Principles of French Law* (2<sup>nd</sup> ed, Oxford University Press 2009).

Bella N, ‘Affaire Thierry Atangana: L’Etat fait reprendre le procès’ *La Météo* (Yaoundé, 19 July 2012) <<http://cameroon-info.net/stories/0,36114,@,affaire-thierry-atangana-l-etat-fait-reprendre...>> accessed 19 July 2012.

Bellamy R, ‘The Political Form of the Constitution: The Separation of Powers, Rights and Representative Democracy’ (1996) 64 *Political Studies* 436.

— — *Political Constitutionalism: A Republican Defense of the Constitutionality of Democracy* (Cambridge University Press 2007).

Bellamy R & Castiglione D, ‘The Communitarian Ghost in the Cosmopolitan Machine: Constitutionalism, Democracy and the Reconfiguration of Politics in New Europe’ in Bellamy (ed) *Constitutionalism, Democracy and Sovereignty: American and European Perspectives* (Aldershot 1996).

Benda-Beckman von F and K, ‘Change and Continuity in Plural Legal Orders’ (2006) 53-54 *Journal of Legal Pluralism and Unofficial Law* 1.

Bennett T, *Customary Law in South Africa* (Juta & Co Ltd 2004).

Bertelsmann Stiftung, 'Bertelsmann Transformation Index 2012- Cameroon Country Report' (Gütersloh: Bertelsmann Stiftung, 2012) <[www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf](http://www.bti-project.de/fileadmin/Inhalte/reports/2012/pdf)> accessed 20 July 2012.

Berthélemy H, *Traité Élémentaire de Droit Administratif* (8<sup>th</sup> ed, Paris 1916).

Bertolt B, 'Opération Épervier: Paul Biya veut sanctionner des magistrats' *Mutations* (Yaoundé, 13 August 2012) <[www.cameroon-info.net/stories/0,36747,@,operation-epervier-paul-biya-veut-sanctionner-des-magistrats.html](http://www.cameroon-info.net/stories/0,36747,@,operation-epervier-paul-biya-veut-sanctionner-des-magistrats.html)> accessed 13 August 2012.

Bilong S, 'La Structure du Pouvoir de L'Etat au Cameroun: Une Analyse Socio-Juridique' (African Training and Research Centre in Administration for Development, Morocco, 2001) <<http://unpan1.un.org/introduc/groups/public/documents/cafrad...pdf>> accessed 16 July 2012.

Biya P, 'Presidential Speech' (Fiftieth anniversary of the National School of Administration and Magistracy, Yaoundé, 01 December 2009) in Cameroon Ministry of Justice, 'Report on Human Rights in Cameroon-2009' <[www.spm.gov.cm/uploads/media/Rapport\\_Minjustice\\_Ang\\_2009.pdf](http://www.spm.gov.cm/uploads/media/Rapport_Minjustice_Ang_2009.pdf)> accessed on 12 March 2011.

Bonu I, 'Neglect of the Judiciary' (2002) 1 *Cameroon Common Law Journal* 5.

Bradley AW, 'The Constitutional Position of the Judiciary' in David Feldman (ed) *Public Law* (Oxford University Press 2004).

Bratton M and Van de Walle N, 'Neopatrimonial Regimes and Political Transitions in Africa' (1994) 46(4) *World Politics* 453.

— — *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective* (Cambridge University Press 1997).

Brown N & Bell J, *French Administrative Law* (5<sup>th</sup> ed, Oxford University Press 1998).

Buchanan A, *Justice, Legitimacy and Self-determination: Moral Foundations for International Law* (Oxford University Press 2004).

Buergenthal T, 'The Human Rights Revolution' (1991) 23 *St Mary's Law Journal* 3.

Bühlmann M & Kunz R, 'Confidence in the Judiciary: Comparing the Independence and Legitimacy of Judicial Systems' (2011) 34(2) *West European Politics* 317.

Burbank S, 'The Past and Present of Judicial Independence' (1996) 80(3) *Judicature* 117.

— — ‘The Architecture of Judicial Independence’ (1999) 72 *Southern California Law Review* 315.

— — ‘Judicial Independence, Judicial Accountability and Inter-branch Relations’ (2007) 95 *The Georgetown Law Journal* 909.

Burbank S and Friedman B, *Judicial Independence at the Crossroads: An Interdisciplinary Approach* (Sage Publications 2002).

Business Anti-Corruption Portal, ‘Cameroon Country Profile’ < [www.business-anti-corruption.dk/country-profiles/sub-saharan-africa/cameroon/show-all/](http://www.business-anti-corruption.dk/country-profiles/sub-saharan-africa/cameroon/show-all/)> accessed 20 July 2012.

Cabanis A, and Martin M, *Les Constitutions d’Afrique Francophone: Evolution Récentes* (Karthala 1999).

Cameroon Ministry of Justice, ‘7<sup>th</sup> Periodic Report of the State of Cameroon 2001-2003’ CF./OS (XXXIV)/ 332A of the ACHPR.

Cameroon Ministry of Justice, ‘Report on Human Rights in Cameroon-2009’ 80-81 <[www.spm.gov.cm/uploads/media/Rapport\\_Minjustice\\_Ang\\_2009.pdf](http://www.spm.gov.cm/uploads/media/Rapport_Minjustice_Ang_2009.pdf)> accessed 12 March 2011.

Canivet G, ‘The Responsibility of Judges in France’ in Canivet G, Andenas M and Fairgrieve D (eds), *Judicial Independence and Accountability* (British Institute of International and Comparative Law 2006).

Cappelletti M, *The Judicial Process in Comparative Perspective* (Oxford University Press 1989).

Carey HF, ‘The Postcolonial State and the Protection of Human Rights’ (2002) 22 *Comparative Study of South Asia, Africa & Middle East* 59.

Carey HF and Howard R, ‘Independent Judiciaries and Democratic Rule’ (Annual Meeting of the American Political Science Association, Boston, 2002).

Castiglione D, ‘The Political Theory of the Constitution’ in Bellamy R & Castiglione D (eds), *Constitutionalism in Transformation: European and Theoretical Perspectives* (Blackwell Publishers 1996).

Cavatorta F and Elgie R, ‘The Impact of Semi-presidentialism on Governance in the Palestinian Authority’ (2010) 63 (1) *Parliamentary Affairs* 22.

CDS, ‘Affaire Yen Eyoun: Le Ministère Public Conclut au Rejet de Toutes les Exceptions’ *La Nouvelle Expression* (Yaoundé, 09 February 12)

<[www.lanouvelleexpression.info/themis/6808-affaire-yen-eyoum-le-ministere-public-conclut-au-rejet-de-toutes-les-exceptions-.html](http://www.lanouvelleexpression.info/themis/6808-affaire-yen-eyoum-le-ministere-public-conclut-au-rejet-de-toutes-les-exceptions-.html)> accessed 12 February 2012.

Chapus R, 'L'acte de Gouvernement: Monstre ou Victime?' (1958) *Recueil Dalloz*, Chronique II, 5.

Checka C, 'Traditional Authority at the Crossroads of Governance in Republican Cameroon' (2008) 33 (2) *Africa Development* 67.

Chem-Langhee B, 'The Origins of the Southern Cameroons House of Chiefs' (1983) 16(4) *The International Journal of African Historical Studies* 653.

Chiabi E, *The Making of Modern Cameroon: A History of Substate Nationalism and Disparate Union, 1914-1961* (University Press of America 1997).

Choo A, *Abuse of Process and Judicial Stays of Criminal Proceedings* (Oxford University Press 2008).

Choves Lore, 'Cameroon: Opposition for New Electoral Code' *Cameroon Tribune*, (Yaoundé, 27 August 2012) <[allafrica.com/stories//201208301091.html](http://allafrica.com/stories//201208301091.html)> accessed 19 June 2012

Citizen's Governance Initiative (CGI), 'The Right to Information and Administrative Transparency in Cameroon' (Yaoundé, Imprimerie Saint Paul 2010) <[www.citizens-governance.org/IMG/pdf/Right\\_Access\\_Info\\_Admin\\_Transparency\\_CMR.pdf](http://www.citizens-governance.org/IMG/pdf/Right_Access_Info_Admin_Transparency_CMR.pdf)> accessed 24 January 2012.

Collins R, *African History: Western African History* (Markus Wiener Publishers 1997).

Committee to Protect Journalists, 'Attacks on the Press in 2011: Cameroon' (21 February 2012) <<http://cpj.org/africa/cameroon/>> accessed 06 January 2012.

Commonwealth Secretariat, *Report of the Commonwealth Observer Group to the Parliamentary Elections in Cameroon, 17 May 1997* (Commonwealth Secretariat 1997).

Commonwealth Secretariat, '2011 Cameroon CET Presidential Election Report' (London, 22 December 2011) <[www.thecommonwealth.org/files/242978](http://www.thecommonwealth.org/files/242978)> accessed 06 January 2012.

Conklin A, 'Colonialism and Human Rights, A Contradiction in Terms? The Case of France and West Africa: 1895-1914' (1998) 103(2) *The American Historical Review* 419.

Corey A and Joireman S, 'Retributive Justice: The *Gacaca* Courts in Rwanda' (2004) 103 *African Affairs* 73.

Craig P, 'Constitutions, Constitutionalism and the European Union' (2001) 7(2) *European Law Journal* 125.

Creddle E and Fox-Decent E, 'Human Rights, Emergencies and the Rule of Law' (2012) 34(1) *Human Rights Quarterly* 39.

Davis D 'Constitutional Borrowing: The Influence of Legal Culture and Local History in the Reconstitution of Comparative Influence- The South African Experience' (2003) 1(2) *International Journal of Constitutional Law* 181.

Davis M, 'East Asia After the Crisis: Human Rights, Constitutionalism and State Reform' (2004) 26(1) *Human Rights Quarterly* 126.

Delancey M, *Cameroon: Dependence and Independence* (Westview Press 1989).

Deng F, *Identity, Diversity and Constitutionalism in Africa* (United States Institute of Peace Press 2008).

De Smith SA, *The Commonwealth and its Constitutions* (London: Stevens 1964)

Diamond L and Plattner M, 'Francophone Africa in Flux' (2001) 12(3) *Journal of Democracy* 35.

Dicey AV, *Introduction to the Study of Law* (6<sup>th</sup> ed, Macmillan & Co. 1902).

Dicklitch S, 'Failed Democratic Transition in Cameroon: A Human Rights Explanation' (2002) 24(1) *Human Rights Quarterly* 152.

Dougueli G, 'Paul Biya Remanie Son Gouvernement: Valse des Ministres à Yaoundé' (30 June 2009) <[www.JeuneAfrique.com/Article/ARTJAWEB20090630235233/-RDPC-Paul-Biya...](http://www.JeuneAfrique.com/Article/ARTJAWEB20090630235233/-RDPC-Paul-Biya...)> accessed 12 November 2012.

— — 'Cameroun: Atangana et Edzoa, Procès à durée Indéterminée' *Jeune Afrique* (Paris, 27 July 2012) <[www.jeuneafrique.com/Article/JA2689P018.xml/cameroun-justice-process-paul-biyacameroon](http://www.jeuneafrique.com/Article/JA2689P018.xml/cameroun-justice-process-paul-biyacameroon)> accessed 13 August 2012.

Drago G, 'Le Nouveau Visage du Contentieux Constitutionnel' (2010) 84(4) *Revue Française de Droit Constitutionnel* 751.

Dubois L, 'Le Régimes Présidentiel dans les Nouvelles Constitutions des États Africains d'Expression Française' (1962) 691 *Penant* 218.

Dugast I, 'The Banen, Bafia and Balom', in Forde D (ed), *Peoples of the Central Cameroons* (The International African Institute 1954).

Duguit L, *Traité de Droit Constitutionnel III* (3<sup>rd</sup> ed, Ancienne Librairie Fontemoing 1930).

Duverger M, 'A New Political System Model: Semi-Presidential Government' (1980) 8 *European Journal of Political Research* 166.

Dzudie G, 'Cameroun: L'Opposition Camerounaise appelle au Boycott de défilé du 20 Mai' <[www.camer.be/index1.php?art=19309&rub=6:1](http://www.camer.be/index1.php?art=19309&rub=6:1)> accessed 19 June 2012.

Eckert J, 'Urban Governance and Legal Pluralism in Mumbai' (2004) 50 *Journal of Legal Pluralism* 29.

Eko L, 'Hear all Evil, See all Evil, Rail all Evil: *Le Messenger* and Journalism of Resistance in Cameroon' in Mbaku J & Takougang J (eds), *The Leadership Challenge in Africa: Cameroon under Paul Biya* (Africa World Press Inc. 2004).

Elgie R, *Political Institutions in Contemporary France* (Oxford University Press 2003).

— — 'A Fresh Look at Semi-Presidentialism: Variations on a Theme' (2005) 16(3) *Journal of Democracy* 98.

Elster J, 'Constitutionalism in Eastern Europe: An Introduction' (1991) 58 *University of Chicago Law Review* 447.

Embom L, 'Droits de l'Homme: Amnesty International Épinglé le Cameroun' (Yaoundé 16 December 2012) <[www.cameroon-info.net/stories/0,39576,@,droits-de-l-homme-amnesty-international-epingle-le-cameroun.html](http://www.cameroon-info.net/stories/0,39576,@,droits-de-l-homme-amnesty-international-epingle-le-cameroun.html)> accessed 16 December 2012.

Enonchong L, 'Habeas Corpus under the New Criminal Procedure Code of Cameroon? Progress or Status Quo?' *Journal of African Law* (forthcoming).

Enonchong N, 'Human Rights Violations by the Executive: Complicity of the Judiciary in Cameroon' (2003) 47 *Journal of African Law* 265.

— — 'Harmonisation of Business Law in Africa: Is Article 42 of the OHADA Treaty a Problem?' (2007) 51(1) *Journal of African Law* 95

Epuli SCJ, 'Opening Address' (Seminar on 'The Independence of Justice and the Fight Against Corruption in the Judicial System', Yaoundé, March 2006) <[www.coursupreme.cm/index.php?csc=allocution10](http://www.coursupreme.cm/index.php?csc=allocution10)> accessed 16 March 2011.

Etonga M, 'An Imperial Presidency: A Study of Presidential Power in Cameroon' in Kofele-Kale N (ed), *An African Experiment in Nation Building: The Bilingual Cameroon Republic Since Reunification* (Westview Press 1980).



Evande J, 'Empowering the Judiciary: Making Judicial Power Possible' (2001) 1 *The Imperial Judge: SOWEMAC Judicial Journal* 42.

Evans M & Murray R, *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2006* (2<sup>nd</sup> ed, Cambridge University Press 2008).

Eze M, 'What is African Communitarianism? Against Consensus as a Regulative Ideal' (2008) 27(4) *South African Journal of Philosophy* 386.

Fallon R Jr, 'The Core of an Uneasy Case for Judicial Review' (2008) 121 *Harvard Law Review* 1693.

Fatin-Rouge M, 'La question préjudicielle de constitutionnalité: étude du projet français au regard du droit comparé' (2008) 23 *Annuaire International de Justice Constitutionnelle* 13.

Faundez J, 'Constitutionalism: A Timely Revival' in Greenberg D, Katz S, Oliviero M and Wheatley S (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993).

Fauré Y, 'Les Constitutions et l'Exercice du Pouvoir en Afrique Noire: Pour une Lecture Différente des Textes' (1981) 1 *Politique Africaine* 45.

Favoreu L, 'Actualité et Légitimité du Contrôle Juridictionnel des lois en Europe Occidentale' (1984) *Revue du Droit Public et de la Science Politique* 1147.

— — 'Un Faux Débat Nécessaire' (1986-87) *Commentaire* 682.

— — 'La Légitimité du Juge Constitutionnel' (1994) 2 *Revue Internationale de Droit Comparé* 557.

Favoreu L, Scaffoni G et al, *Droits Constitutionnel* (Éditions Dalloz 2008).

Feldman D, 'Constitutionalism, Deliberative Democracy and Human Rights' in Morrison J, McEvoy K and Anthony G (eds) *Judges, Transition and Human Rights* (Oxford University Press 2007) 444-445.

Ferejohn J and Kramer L, 'Independent Judge, Dependent Judiciary: Institutionalising Judicial Restraint' (2002) 77 *New York University Law Review* 962.

Ferejohn J and Pasquino P, 'The Law of the Exception: A Typology of Emergency Power' (2004) 2(2) *International Journal of Constitutional Law* 210.

Fiss O, 'The Limits of Judicial Independence' (1993) 25 *University of Miami Inter-American Law Review* 57.

Fombad C, 'Freedom of Expression in the Cameroonian Democratic Transition' (1995) 33(2) *Journal of Modern African Studies* 211.

— — 'The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?' (1998) 42 (2) *Journal of African Law* 172.

— — 'Protecting Constitutional Values in Africa: A Comparison of Botswana and Cameroon' (2003) 36(1) *The International and Comparative Law Journal of Southern Africa* 83.

— — 'Cameroon's Emergency Powers: A Recipe for (un)Constitutional Dictatorship' (2004) 48 (1) *Journal of African Law* 62.

— — 'A Preliminary Assessment of the Prospects for Judicial Independence in Post-1990 African Constitutions' (2007) *Public Law* 233.

— — 'Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa' (2007) 55(1) *American Journal of Comparative Law* 1.

— — 'Researching Cameroonian Law', (June/July 07) <[www.nyulawglobal.com/globalex/Cameroon.htm](http://www.nyulawglobal.com/globalex/Cameroon.htm)> accessed 13 August 2009.

— — 'Constitutional Reforms in France and their Implications for Constitutionalism in Francophone Africa' (2008) *Open Society Justice Initiative: AfriMAP* 1.

— — 'Constitutional Reforms and Constitutionalism in Africa: Reflections on some Current Challenges and Future Prospects' (2011) 59 *Buffalo Law Review* 1007.

Fombad C and Fonyam J, 'The Social Democratic Front, the Opposition and Political Transition in Cameroon' in Mbaku J & Takougang J (eds), *The Leadership Challenge in Africa: Cameroon under Paul Biya* (Africa World Press Inc. 2004).

Fombad C and Inegbedion N, 'Presidential Term Limits and their Impact on Constitutionalism in Africa' in Fombad C and Murray C (eds), *Fostering Constitutionalism in Africa* (Pretoria University Law Press 2010).

Fonachu JA, 'The Criminal Justice System in Cameroon: Problems Faced with regard to Corruption' (Tenth International Training Course on Criminal Justice Response to Corruption, Tokyo, December 2008) <[www.unafei.or.jp/english/pdf/PDF\\_rms\\_all/no76.pdf](http://www.unafei.or.jp/english/pdf/PDF_rms_all/no76.pdf)> accessed 16 March 2011.

Fonkah E, 'The Judiciary- not really credible' *African News Bulletin*, Issue No. 337 (Cameroon, 01 January 1998) <<http://ospiti.peaceunit.it/anb-bia/nr337/eos.html>> accessed 16 March 2011.

Foundation for Democratic Advancement, '2011 Global Electoral Fairness Audit - Cameroon's Presidential Electoral System' 09 October 2011 <[http://foundationfordemocraticadvancement.blogspot.co.uk/2011/07/2011-fda-lectoral-fairness-audit\\_24.html](http://foundationfordemocraticadvancement.blogspot.co.uk/2011/07/2011-fda-lectoral-fairness-audit_24.html)> accessed 06 January 2012.

Fowler I and Zeitlyn D, 'Preface' in Fowler I and Zeitlyn D (eds), *African Crossroads: Intersections between History and Anthropology in Cameroon* (vol 2, Berghahn Books 1996) xvii- xxvii.

Freedom House, 'Freedom in the World 2010: Cameroon' <[www.freedomhouse.org/report/freedom-world/2011/cameroon](http://www.freedomhouse.org/report/freedom-world/2011/cameroon)> accessed 20 July 2012.

Freedom House, 'Freedom in the World 2011: Cameroon' <[www.freedomhouse.org/report/freedom-world/2011/cameroon](http://www.freedomhouse.org/report/freedom-world/2011/cameroon)> accessed 20 July 2012.

Freedom of Information Exchange, 'RSF Urges Government to take Action on Media Reform in Mission Report' <[www.ifex.org/cameroon/2011/10/06](http://www.ifex.org/cameroon/2011/10/06)> accessed 06 January 2012.

Gabriel JM, 'Cameroon's Neopatrimonial Dilemma' (1999) 7 *Journal of Contemporary African Studies* 187.

Garapon A, 'Une Justice 'Comptable' de ses Decisions?' in Canivet G, Andenas M and Fairgrieve D (eds), *Judicial Independence and Accountability* (British Institute of International and Comparative Law 2006)

Gardbaum S, 'The New Commonwealth Model of Constitutionalism' (2001) 49(4) *American Journal of Comparative Law* 707.

— — 'Human Rights and International Constitutionalism' (2009) UCLA School of Law Research Paper No. 08/01, 30-33 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1088039](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1088039)> accessed 29 August 2012.

Gardinier D, *Cameroon: United Nations Challenge to French Policy* (Oxford 1963).

Garoupa N and Ginsburg T, 'Guarding the Guardians: Judicial Councils and Judicial Independence' (2009) 57(1) *American Journal of Comparative Law* 201.

Gavison R, 'What belongs in a Constitution' (2002) *Constitutional Political Economy* 90.

Gerhardt M, 'The Special Constitutional Structure of the Federal Impeachment Process' (2000) 6(1&2) *Law and Contemporary Problems* 245.

Geschiere P, 'Chiefs and Colonial Rule in Cameroon: Inventing Chieftaincy, French and British Style' (1993) 63(2) *Journal of the International African Institute* 151.

— — *The Perils of Belonging: Autochthony, Citizenship and Exclusion in Africa and Europe* (University of Chicago Press 2009).

Geyh C, 'Rescuing Judicial Accountability from the Realm of Political Rhetoric' (2006) 56(4) *Case Western Law Review* 911.

Ghai Y, 'The Theory of the State in the Third World and the Problematics of Constitutionalism' in Greenberg D, Katz S, Oliviero M and Wheatley S (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993).

Gicquel J & Gicquel J, *Droit Constitutionnel et Institutions Politiques* (24<sup>th</sup> ed, Montchrestien 2010).

Ginsburg T, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press 2003).

— — 'Administrative Law and Judicial Control of Agents in Authoritarian Regimes' in Ginsburg & Moustafa (eds) *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge 2008).

Ginsburg T and Elkins Z, 'Ancillary Powers of Constitutional Courts' (2009) 87 *Texas Law Review* 1431.

Ginsburg T, Melton J & Elkins Z, 'On the Evasion of Executive Term Limits' (2011) 52 *William and Mary Law Review* 1807.

Glaeser E & Shleifer A, 'Legal Origins' (2002) 117(4) *Quarterly Journal of Economics* 1193.

Global Integrity Report: Cameroon — 2010  
<[www.globalintegrity.org/report/Cameroon/2010](http://www.globalintegrity.org/report/Cameroon/2010)> accessed 20 July 2012.

Goldsworthy J, 'Questioning the Migration of Constitutional Ideas: Rights Constitutionalism and the Limits of Convergence' in Choudhry S (ed) *The Migration of Constitutional Ideas* (Cambridge University Press 2007).

Gonidec PF, *Les Systèmes Politiques Africains* (Tome II, Librairie Générale de Droit 1974).

Gray H, *A Study of Cameroon's UPC Rebellion and Chinese Communist Involvement* (USA: University Microfilms Incorporated 1969).

Greenberg D, Katz S, Oliviero M and Wheatley S, 'Introduction' in Greenberg D, Katz S, Oliviero M and Wheatley S (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993).

Grimm D, 'Integration by Constitution' (2005) 3(2-3) *International Journal of Constitutional Law* 193.

— — 'The Achievement of Constitutionalism and its Prospects in a Changed World' in Dobner P & Loughlin M (eds) *The Twilight of Constitutionalism* (Oxford University Press 2010).

Gross O, 'Constitutions and Emergency Regimes' in Ginsburg T and Dickson R (eds), *Comparative Constitutional Law* (Edward Elgar Publishing 2011).

Grossman C, 'A Framework for the Examination of States of Emergency Under the American Convention on Human Rights' (1986) 1(1) *American University International Law Review* 35.

Guliyev F, 'Personal Rule, Neopatrimonialism and Regime Typologies: Integrating Dahlian and Weberian Approaches to Regime Studies' (2011) 18(3) *Democratisation* 575.

Gyekye K, *Tradition and Modernity: Philosophical Reflections on the African Experience* (Oxford University Press 1997).

Hackett R, *Religion in Calabar: The Religious Life and History of a Nigerian Town* (Mouton de Gruyter 1988).

Halliday S, 'The Influence of Judicial Review on Bureaucratic Decision Making' (2000) *Public Law* 110.

Hammond AH, 'Judicial Review: The Continuing Interplay between Law and Policy' (1998) *Public Law* 34.

Hansen K, 'The Politics of Personal Relations: Beyond Neopatrimonial Practices in Northern Cameroon' (2003) 73(2) *Africa: Journal of the International African Institute* 202.

Hatchard J, 'Presidential Removal: Unzipping the Constitutional Provisions' (2000) 44(1) *Journal of African Law* 1.

Hatchard J, Ndulo M & Slinn P, *Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective* (Cambridge University Press 2004).

Hayatou El Hadj, 'Explanatory notes to the February 1984 Constitutional Amendment', in *Constitutional and Parliamentary Information* (1<sup>st</sup> Series, No. 143, The Inter-Parliamentary Union 1985).

Helmke G and Rosenbluth F, 'Regimes and the Rule of Law: Judicial Independence in Comparative Perspective' (2009) 12 *Annual Review of Political Science* 345.

Henderson L, 'Authoritarianism and the Rule of Law' (1991) 66(2) *Indiana Law Journal* 382.

Henkin L, *Constitutionalism Democracy and Foreign Affairs* (Columbia University Press 1990).

— — 'A New Birth of Constitutionalism: Genetic Influences and Genetic Defects' in Michel Rosenfeld (ed), *Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives* (Duke University Press 1994).

Hennessy A, 'Indigenous Sentencing Practices in Australia' (International Society for the Reform of the Criminal Law Conference, Brisbane, 2006) <[www.isrcl.org/Papers/2006/Hennessy.pdf](http://www.isrcl.org/Papers/2006/Hennessy.pdf)> accessed 12 January 2012.

Herbert M, 'The Emergency Power and Civil Liberties in Canada' (1970) 16 *McGill Law Journal* 39.

Hodgson J, *French Criminal Justice: A Comparative Account of the Investigation and Prosecution of Crime in France* (Hart Publishing 2005).

— — 'The French Prosecutor in Question' (2010) 64 *Washington & Lee Law Review* 1361.

Horowitz D, *A Democratic South Africa?: Constitutional Engineering in a Divided Society (Perspectives on Southern Africa)* (University of California Press 1992).

House of Commons Hansard Index on 'Cameroon: Corruption, 6 Jan 2010' Column 408W <[www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100106/text/100106w0018.htm#column\\_408](http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100106/text/100106w0018.htm#column_408)> accessed 19 April 2011.

Howard R, 'Legitimacy and Class Rule in Commonwealth Africa: Constitutionalism and the Rule of Law' (1985) 7(2) *Third World Quarterly* 323.

— — *Human Rights in Commonwealth Africa* (Rowman & Littlefield 1986).

Huber J, 'Executive Decree Authority in France' in Carey J and Shugart M (eds), *Executive Decree Authority* (Cambridge University Press 1998).

Human Rights Watch; 'Cameroon: Court Upholds Unjust 'Homosexuality' Conviction' (18 December 2012) <[www.hrw.org/news/2012/12/18/cameroon-court-upholds-unjust-homosexuality-conviction](http://www.hrw.org/news/2012/12/18/cameroon-court-upholds-unjust-homosexuality-conviction)> accessed 18 December 2012.

Hunter-Hénin M, 'Constitutional Developments and Human Rights in France: One Step Forward and Two Steps Back' (2011) 60(1) *International and Comparative Law Quarterly* 167

Huntington S, *Third Wave: Democratisation in the Late Twentieth Century* (University of Oklahoma Press 1991).

— — *The Clash of Civilisations and the Remaking of World Order* (Simon & Schuster 1996).

Ibhawoh B, 'Stronger than the Maxim Gun Law, Human Rights and British Colonial Hegemony in Nigeria' (2002) 72(1) *Journal of the International African Institute* 55.

Ihonybere J, 'Towards a New Constitutionalism in Africa' (2000) *Centre for Democracy and Development Occasional Series Paper No. 413*.

Inglis JA., 'The New Challenges in the New Constitutional Dispensation' (1998) *The Common Law in Cameroon* 16.

Inter Parliamentary Union, 'Cameroon (National Assembly)' (27 August 2007) <[www.ipu.org/praline-e/reports/Ctr/parlementaire/2053\\_F.htm](http://www.ipu.org/praline-e/reports/Ctr/parlementaire/2053_F.htm)> accessed 02 February 2012.

Inter Parliamentary Union, 'Cameroon: Case N° Cm/01 - Dieudonné Ambassa Zang', (IPU Governing Council, Kampala, 5 April 2012) <<http://www.ipu.org/hr-e/190/Cm01.htm>> accessed 12 June 2012.

International Bar Association (IBA), 'Review of the Draft Criminal Procedure Code of Cameroon' (IBA Human Rights Institute 2003) 5 <[www.ibanet.org/Human\\_Rights\\_Institute/Work\\_by\\_regions/Africa/Cameroon.aspx](http://www.ibanet.org/Human_Rights_Institute/Work_by_regions/Africa/Cameroon.aspx)> accessed 19 November 2012.

International Crisis Group, 'Cameroon: The Dangers of A Fracturing Regime' (Africa Report No. 161, 24 June 2010) <[www.crisisgroup.org/~media/Files/africa/west-africa/cameroon/161%20CAMEROON...pdf](http://www.crisisgroup.org/~media/Files/africa/west-africa/cameroon/161%20CAMEROON...pdf)> accessed 16 March 2012.

International Freedom of Expression Exchange (IFEX), 'RSF Urges Government to take Action on Media Reform in Mission Report' <[www.ifex.org/cameroon/2011/10/06/](http://www.ifex.org/cameroon/2011/10/06/)> accessed 06 January 2012.

Jackson R & Rosberg C, *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant* (University of California Press 1982).

Joireman SF, 'Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy' (2001) 39(4) *Journal of Modern African Studies* 571.

— — 'Colonisation and the Rule of Law: Comparing the Effectiveness of Common Law and Civil Law Countries' (2004) 15 *Constitutional Political Economy* 315.

Johnson W, *The Cameroon Federation: Political Integration in a Fragmentary Society* (Princeton University Press 1970).

Joseph R, *Radical Nationalism in Cameroon: Social Origins of the UPC Rebellion* (Oxford University Press 1977).

— — *Gaullist Africa: Cameroon under Ahmadou Ahidjo* (Fourth Dimension Publishers 1978).

Joseph S, 'Human Rights Committee: General Comment 29' (2002) 1 *Human Rights Law Review* 81.

Kah HK, 'Regulatory Societies, Peacebuilding and Maintenance in the Cross River Regions of Nigeria and Cameroon' (2011) 1(2) *African Conflict and Peacebuilding Review* 50.

Kalle M, 'Deconstructing the Dialectics of Press Freedom and Communication in Cameroon' in Eribo F and Jong-Ebot W (eds) *Press Freedom and Communication in Africa* (Africa World Press 1997) 268.

Kamto M, 'Une Justice entre Tradition et Modernité' in Conac G and De Gaudusson J (eds) *La Justice en Afrique* (Afrique contemporaine n° (spécial) 156, La Documentation française 1990) 64.

— — 'Les Mutations de la Justice Camerounaise à la Lumière des Développements Constitutionnels de 1996' (2000) 1(1) *Reveu Africaine des Sciences Juridiques* 9.

Kankeu J, *Droit Constitutionnel* (Tome 1, 1er Edition, Presses Universitaires de Dschang 2003).

Keith LC, 'Judicial Independence and Human Rights Protection around the World' (2002) 85(4) *Judicature* 195.

— — 'National Constitutions and Human Rights Protection: Regional Differences and Colonial Influences' in Carey S and Poe S (eds), *Understanding Human Rights Violations: New Systemic Studies* (Ashgate 2004) 162-185.

Keith LC and Ogundele A, 'Legal Systems and Constitutionalism in Sub-Saharan Africa: An Empirical Examination of Colonial Influences on Human Rights' (2007) 29 *Human Rights Quarterly* 1071.



Kelsen H, 'La Garantie Jurisdictionelle de la Constitution' (1928) 44 *Revue de Droit Public* 197.

— — 'Judicial Review of Legislation: A Comparative Study of the Austrian and American Constitution' (1942) 4(2) *Journal of Policy* 183.

Kendemeh E, 'Hon. Ayah Paul Abine' *Cameroon Tribune* (Yaoundé, 10 January 2011) <[www.cameroon-tribune.cm/index.php?option=com\\_content&view=article&id=62972:hon-ayah-paul-abine-quits-cpdm&catid=1:politique&Itemid=3](http://www.cameroon-tribune.cm/index.php?option=com_content&view=article&id=62972:hon-ayah-paul-abine-quits-cpdm&catid=1:politique&Itemid=3)> accessed 29 August 2012.

Kirschke L, 'Semi-Presidentialism and the Perils of Power Sharing in Neopatrimonial States' (2007) 40 (11) *Comparative Political Studies* 1372.

Klare K, 'Legal Culture and Transformative Constitutionalism' (1997) 13 *South African Journal of Human Rights* 146.

Klug H, 'South Africa's Experience in Constitution Building' in Morris C, Boston J and Butler P (eds) *Reconstituting the Constitution* (Springer 2011).

Knapp A and Wright V, *The Government and Politics of France* (4<sup>th</sup> ed, Routledge 2001)

Kofele-Kale N, 'Ethnicity, Regionalism and Political Power: A Post-mortem of Ahidjo's Cameroon' in Schatzerberg M and Zartman W (eds), *The Political Economy of Cameroon* (Praeger 1986).

Konings P, 'The Anglophone Struggle for Federalism in Cameroon' in Lidija Basta & Jibrin Ibrahim (eds) *Federalism and Decentralisation in Africa: The Multicultural Challenge* (Fribourg: Institute of Federalism, 1999)

— — *The Politics of Neoliberal Reforms in Africa: State and Civil Society in Cameroon* (Langaa Research/ African Studies Centre 2011).

Konings P and Nyamnjoh F, *Negotiating an Anglophone Identity: A Study of the Politics of Recognition and Representation in Cameroon* (BRILL 2003).

Kouomegni AK, 'Minister of Communication's Introductory Note to the 1996 Constitutional Amendment' *Fundamental Legal Texts* (vol 1, National Printing Press 1996).

Kramer LD, *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford University Press 2004).

Kumm M, 'Institutionalising Socratic Contestation: The Rationalist Human Rights Paradigm, Legitimate Authority and the Point of Judicial Review' (2007) 2 *European Journal of Legal Studies* 1.

Kuo M, 'Reconciling Constitutionalism with Power: Towards a Constitutional Nomos of Political Ordering' (2010) 23(3) *Ratio Juris* 390.

Lamanda V, 'Discours de M. Vincent Lamanda, Premier Président de la Cour de cassation' (Audience Solennelle de la Cour de cassation, Paris, 7 January 2011) <[www.conseil-superieurdela magistrature.fr](http://www.conseil-superieurdela magistrature.fr)> accessed 11 March 2011.

La Porta R, Lopez-de-Silanes F, Andrei S and Vishny R, 'The Quality of Government' (1999) 15 *Journal of Law, Economics and Organisation* 222.

La Porta R, Lopez-de-Silanes F, Andrei S and Eleches C, 'Judicial Checks and Balances' (2004) 112(2) *Journal of Political Economy* 445.

La Porta R, Lopez-de-Silanes F and Andrei S, 'The Economic Consequences of Legal Origins' (2008) 46(2) *Journal of Economic Literature* 287.

Larkins C, 'Judicial Independence and Democratisation: A Theoretical and Conceptual Analysis' (1996) 44(4) *American Journal of Comparative Law* 605.

Law D, 'Judicial Independence' in Badie B, Berg-Schlosser D and Morlino L (eds), *International Encyclopaedia of Political Science* (vol 5, Sage Publications 2011).

— — 'Judicial Review' in Badie B, Berg-Schlosser D and Morlino L (eds), *International Encyclopaedia of Political Science* (vol 5, Sage Publications 2011).

Le Mon C, 'Rwanda's Troubled *Gacaca* Courts' (2007) 2(14) *Human Rights Brief* 16.

Le Vine VT, *The Cameroon Federal Republic* (Cornell University Press 1963).

— — *The Cameroons: From Mandate to Independence* (University of California Press 1964).

— — 'Leadership and Regime Changes in Perspective' in Schatzberg and Zartman W, *The Political Economy of Cameroon* (Praeger 1985) 20-49.

Lever A, 'Democracy and Judicial Review: Are they Really Incompatible?' (2009) 7(4) *Perspectives on Politics* 805.

Lijphart A, *Patterns of Democracy: Government Forms and Performance in Thirty Six Countries* (Yale University Press 1999).

Locke J, *Two Treatise of Government* (Peter Laslett ed, Cambridge University Press 1991).

Lord Phillips P, 'Judicial Independence and Accountability: A View from the Supreme Court' (UCL Constitution Unit, launch of research project on *The Politics of Judicial*

*Independence*, London, 8 February 2011)  
<[www.supremecourt.gov.uk/docs/speech\\_110208.pdf](http://www.supremecourt.gov.uk/docs/speech_110208.pdf)> accessed 30 March 2011.

Lowenstein K, *Political Power and the Governmental Process* (University of Chicago Press 1965).

Lutz D, 'Thinking about Constitutionalism at the Start of the Twenty-First Century' (2000) 30(4) *Publius: The Journal of Federalism* 115.

Madhuku L, 'Constitutional Protection of the Independence of the Judiciary: A Survey of the Position in Southern Africa' (2002) 46(2) *Journal of African Law* 232.

Mamdani M, 'Social Movements and Constitutionalism: The African Context' in Greenberg D, Katz S, Oliviero M and Wheatley S (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993).

Mazrui A, 'Constitutional Change and Cultural Engineering: Africa's Search for New Directions' in Oloka-Onyango J *Constitutionalism in Africa: Creating Opportunities Facing Challenges* (Fountain Publishers 2001)

Mbaku J, *Culture and Customs of Cameroon* (Greenwood Press 2005).

Mbembe A, *La Naissance du Marquis dans le Sud-Cameroun (1920-1960)* (Karthala-CNRS 1996).

— — *On the Postcolony* (University of California Press 2001).

Mbiada T, 'The Exhaustion of Internal Remedies in Administrative Law: A Comparative Analysis of the South African and Cameroonian Requirements and Procedure' (2012) 20(1) *African Journal of International and Comparative Law* 119.

Mbile NN, *Cameroon Political Story: Memories of an Authentic Eyewitness* (Presprint 1999).

Mbuagbor O and Akoko R, 'Roll Back: Democratisation and Social Fragmentation in Cameroon' (2004) 13(1) *Nordic Journal of African Studies* 1.

McCulloch M, 'The Tikar' in Forde D (eds) *Peoples of the Central Cameroons* (International African Institute 1954) 41.

McIlwain C, *Constitutionalism: Ancient and Modern* (Cornell University Press 1940).

Menounga E, 'Cameroun: Me Eyoun restera en détention à Kondengui' *Mutations* (Yaoundé, 19 August 2011) <[www.quotidienmutations.info/vivre-aujourd'hui.php?subaction=showfull&id=1313742328&archive=&start\\_from=&ucat=3&](http://www.quotidienmutations.info/vivre-aujourd'hui.php?subaction=showfull&id=1313742328&archive=&start_from=&ucat=3&)> accessed 20 August 2011.

Merryman JH, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe* (2<sup>nd</sup> ed, Stanford University Press 1985).

— — ‘The French Deviation’ (1996) 44(1) *American Journal of Comparative Law* 109.

Metou B ‘Le Moyen de Droit International Devant Les Juridictions Internes en Afrique : Quelques Exemples d’Afrique Noire Francophone’ (2009) 22(1) *Revue Québécoise de Droit International* 129.

Metz T, ‘Towards an African Moral Theory’ (2007) 15(3) *Journal of Political Philosophy* 321.

Michelman F, ‘The Constitution, Social Rights and Liberal Political Justification’ (2003) 1(1) *International Journal of Constitutional Law* 13.

Ministère de la Justice (République Française), ‘Les Magistrats’ <[www.adol.justice.gouv.fr/php/page.php?ref=3a](http://www.adol.justice.gouv.fr/php/page.php?ref=3a)> accessed 16 August 2012.

Ministry of Communication, ‘Documentations et Archives: Textes Législatifs et Réglementaires’ <[www.mincom.gov.cm/index.php?info=treg&&rub=rtreg](http://www.mincom.gov.cm/index.php?info=treg&&rub=rtreg)> accessed 13 September 2012.

Moderne F, ‘Human Rights and Postcolonial Constitutions in Sub-Saharan Africa’ in Henkin L and Rosenthal A (eds), *Constitutionalism and Rights: the Influence of the United States Constitution Abroad* (Columbia 1990).

Monin M, *Textes et Documents Constitutionnels depuis 1958: Analyse et Commentaires* (Armand Colin 2001).

Monono E, ‘The Right to Information and the 1990 Press Law in Cameroon’ (1992) 6(3) *Africa Media Review* 19.

Montesquieu, *De L’Esprit des Lois*, Book XI, Chapter 6 (Éditions Garnier 1956).

Morris C and Malone R, ‘Regulations Review in the New Zealand Parliament’ (2004) 2 *Macquarie Law Journal* <[www.austlii.edu.au/au/journals/MQLJ/2004/2.html](http://www.austlii.edu.au/au/journals/MQLJ/2004/2.html)> accessed 12 June 2012.

Morris P, *French Politics Today* (Manchester University Press 1994).

Mortimer E, *France and the Africans: 1944-1960* (Faber and Faber Ltd 1961).

Motala Z and Ramaphosa C, *Constitutional Law: Analysis and Cases* (Oxford University Press 2002).

Mouelle P, 'Allocution de Monsieur Le Premier President de La Cour Suprême a L'occasion de La Rentrée Solennelle de Ladite Cour' (Yaoundé, 28 February 2008) <[www.coursupreme.cm/index.php?csc=allocution8](http://www.coursupreme.cm/index.php?csc=allocution8)> last accessed 16 August 2012.

Mouiche I, *Autorités Traditionnelles et Démocratisation au Cameroun: Entre Centralité de l'Etat et Logique de Terroir* (Lit Verlag Münster 2005).

Moyrand A, 'Réflexion sur l'Introduction de l'Etat de droit en Afrique Noire Francophone' (1991) 43(4) *Revue Internationale de Droit Comparé* 853.

Mujuzi J, 'Separating the Church from the State: The Kenyan High Court's Decision in *Jesse Kamau & 25 Others v Attorney General* (judgement of 24 May 2010)' (2011) 55(2) *Journal of African Law* 314.

Munga C, 'Lettre ouverte' *Le Messenger* No. 209 (Yaoundé, 27 December 1990).

Murphy W, 'Constitutions, Constitutionalism and Democracy' in Greenberg D, Katz S, Oliviero M and Wheatley S (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993).

Musa T, 'E U Condemns Elections Management Transfer in Cameroon' (15 November 2009) <[www.newstimeafrica.com/archives/6216](http://www.newstimeafrica.com/archives/6216)> accessed 21 May 2012.

National Democratic Institute, 'Interim Report: International Delegation to the Presidential Elections in Cameroon' (28 October 1992) <[www.ndi.org/files/0822\\_cm\\_interim\\_102892.pdf](http://www.ndi.org/files/0822_cm_interim_102892.pdf)> accessed on 05 January 2012.

Neuman G, 'Anti-Ashwander: Constitutional Litigation as a First Resort in France' (2010) 43 *International Law and Politics* 15.

Ndi M, 'Fru Ndi Tells Enlarge Opposition Meeting Biya Must Go' *Cameroon Postonline* (Buea, 27 August 2012) <[www.cameroonpostline.com/Content.aspx?ModuleID=1&ItemID=8852](http://www.cameroonpostline.com/Content.aspx?ModuleID=1&ItemID=8852)> accessed 27 August 2012.

Ngando A, *L'Affaire Titus Edzoa: "revue de presse" Camerounaise* (l'Harmattan 2000).

Ngimbog L, 'La Justice Administrative à L'Épreuve du Phénomène de la Corruption au Cameroun' *Droit et Société* (2002)2 (51-52) 301.

Nguini M, 'Juristes-Savants, Droits de L'Etat et Etat de Droits au Cameroun' (1998) 6(2) *Polis/ C.P.S.R.* 57.

Ngoh VJ, *Southern Cameroons, 1922-1961: A Constitutional History* (Ashgate 2001).

— — ‘Biya and the Transition to Democracy’ in Mbaku J and Takougang J (eds), *The Leadership Challenge in Africa: Cameroon under Paul Biya* (Africa World Press Inc. 2004).

Njeuma M, *Villiant Soldiers from Fako: An extract from ‘Who is Who in Bakweriland’* (MEGA Impression 2000).

Nolutshungu S, ‘Constitutionalism in Africa: Some Conclusions’ in Greenberg et al (eds) *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993).

NOTE, ‘Counter Insurgency and Constitutional Design’ (2008) 121 *Harvard Law Review* 1622.

Nowrojee B, Human Rights Watch, *Protectors or Pretenders?: Government Human Rights Commissions* (Human Rights Watch 2001) <[www.hrw.org/reports/2001/africa/overview/acknowledgements.html](http://www.hrw.org/reports/2001/africa/overview/acknowledgements.html)> accessed 30 October 2012.

Nsom K, ‘SDF Backs Biya’s Presidential Immunity’ (Buea, 11 April 2008) <[www.postnewsline.com/2008/04/sdf-backs-biyas.html#tp](http://www.postnewsline.com/2008/04/sdf-backs-biyas.html#tp)> accessed 15 May 2012.

Ntoual JW, ‘Affaire Nguini Effa: Le président de la collégialité dessaisi du dossier’ *Le Messenger* (Douala, 17 August 2012) <[www.cameroon-info.net/stories/0,36825,@,affaire-nguini-effa-le-president-de-la-collegialite-essaisi-du-dossier.html](http://www.cameroon-info.net/stories/0,36825,@,affaire-nguini-effa-le-president-de-la-collegialite-essaisi-du-dossier.html)> accessed 17 August 2012.

Nwabueze BO *Constitutionalism in the Emergent States* (Hurst Publishers 1973).

— — *A Constitutional History of Nigeria* (Hurst Publishers 1982).

Nyamnjoh F, ‘Media and Multi-Party Politics in Transitional Cameroon’ (1996) 4 *Nord Süd Aktuell* 738.

— — *Mass Media and Democratisation in Cameroon in the Early 1990s* (Langa Books 2011).

Oben E, ‘Biya Faces Second Resignation Ever from His Cabinet’ <<http://allafrica.com/stories/201112020114.html>> accessed 12 December 2011.

Observatoires Nationale des Droits de L’Homme, ‘Rapport de L’Observatoires National des Droits de L’Homme 2008-2010’ <[www.ccf-d-terresolidaire.org/e\\_upload/pdf](http://www.ccf-d-terresolidaire.org/e_upload/pdf)> accessed 14 May 2012.

OECD-DAC Secretariat, 'Report of the Multi-Donor Governance and Anti-Corruption Mission to Cameroon' (Paris, July 2006) 8 <OECD.org/dataoecd/40/51/37687235.pdf> accessed on 17 August 2012.

Office of the High Commissioner for Human Rights, 'Committee Against Torture Concludes Forty-Fourth Session: Concluding Observations on Report of Cameroon' (14 May 2010) <www.ohchr.org/en/NewsEvents/Pages>.

Ofiaja N, *Stability and Instability in Politics: The Case of Nigeria and Cameroon* (Vantage Press 1979).

Ogbazghi P, 'Personal Rule in Africa: The Case of Eritrea' (2011) 12(2) *African Studies Quarterly* 1.

Ogbondah C and Onyedike E 'Origins and Interpretation of Nigerian Press Laws' (1991) 5 *Africa Media Review* 63.

Ogowewo T, 'Why the Judicial Annulment of the Constitution of 1999 is Imperative for the Survival of Nigeria's Democracy' (2000) 44 *Journal of African Law* 135.

Ohlson T, Stedman S and Davies R, *The New is Not Yet Born: Conflict Resolution in Southern Africa* (The Brookings Institute 1994).

Okafor SO, *Indirect Rule: The Development of Central Legislature in Nigeria* (Nelson Africa Ltd 1981).

Okoth-Ogendo HW, 'Constitutions without Constitutionalism: Reflections on an African Political Paradox' in Greenberg et al (eds) *Constitutionalism and Democracy: Transitions in the Contemporary World* (Oxford University Press 1993).

— — 'Constitutionalism without Constitutions: The Challenge of Reconstruction of the State in Africa', in Carla Zoethout and Boon P, *Constitutionalism in Africa: A Quest for Autochthonous Principles* (Sanders Institute: GQ-D 1996).

Olinga D, 'Politique et Droit Electoral au Cameroun: Analyse Juridique de la Politique Electorale' (1998) 6(2) *Polis/ C.P.S.R.* 40.

Oloka-Onyango J, 'Towards the Future: Confronting Myriad Constitutional Challenges' in Oloka-Onyango J (ed), *Constitutionalism in Africa: Creating Opportunities Facing Challenges* (Fountain Publishers 2001).

Orgad L, 'The Preamble in Constitutional Interpretation' (2010) 8(4) *International Journal of Constitutional Law* 718.

Osaghae E, 'The Passage from the Past to the Present in African Political Thought: The Question of Relevance' in Ali Z, Ayoade J and Agbaje A (eds) *African Traditional Political Thought and Institutions* (Centre for Black & African Arts & Civilization 1989).

— — 'Ethnicity, the State, and Constitutionalism in Africa: Preliminary Observations' in Akiba O (ed), *Constitutionalism and Society in Africa* (Ashgate 2004).

Osei-Hwedie B, 'Botswana: Indigenous Institutions, Civil Society and Government in Peace Building in Southern Africa' (2010) 16(2) *Journal of International Development and Cooperation* 115.

Osiatynski W, 'Rights in New Constitutions of East Central Europe' (1994-1995) 26 *Columbia Human Rights Law Review* 111.

Owusu M, 'Domesticating Democracy: Culture, Civil Society and Constitutionalism' (1997) 39(1) *Comparative Studies in Society and History* 120.

Pech L, 'Rule of Law in France' in Peeremboom R (ed), *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the USA* (Routledge 2004) 79-112.

Peerenbom R, 'Human Rights and the Rule of Law. What's the Relationship?' Public Law and Legal Theory Research Paper No. 0531 <<http://ssrn.com/abstract=816024>> accessed 18 March 2011.

PEN American Centre 'Writer Enoch Meyomessé's detention extended by six months' (Cameroon, 5 July 2012) < [www.pen.org/viewmedia.php/prmMID/6658/prmID/1689](http://www.pen.org/viewmedia.php/prmMID/6658/prmID/1689)> accessed 19 August 2012.

Pernice I, 'Multi-level Constitutionalism in the European Union' (2002) *European Law Review* 511.

Petersmann E, 'Time for a UN 'Global Compact' for Integrating Human Rights Into the Law of Worldwide Organisations: Lessons from European Integration' (2002) 13 *European Journal of International Law* 621.

Phillipson S, *Financial and Administrative consequences to the Southern Cameroons of Separation from the Federation of Nigeria, 1959* (Lagos: Government Printer 1959).

Pigeaud F, *Au Cameroun de Paul Biya* (Karthala 2011).

Pimentel D, 'Rule of Law without Cultural Imperialism: Reinforcing Customary Justice through Collateral Review in Southern Sudan' (2010) 2(1) *Hague Journal on the Rule of Law* 1.



Poe S, Tate N and Keith L, 'Repression of the Human Right to Personal Integrity Revisited: a Global Cross-national Study Covering the Years 1976-1993' (1999) 43( 2) *International Studies Quarterly* 291.

Posner R, *An Affair of State: The Investigation, Impeachment, and Trial of President Clinton* (Harvard University Press 1999).

Prempeh K, 'Marbury in Africa: Judicial Review and the Challenge of Constitutionalism in Contemporary Africa' (2006) 80(1) *Tulane Law Review* 1.

— — 'Africa's "Constitutionalism Revival": False Start or New Dawn?' (2007) 5(3) *International Journal of Constitutional Law* 469.

— — 'Presidential Power in Comparative Perspective: The Puzzling Persistence of Imperial Presidency in Post-Authoritarian Africa' (2008) 35(4) *Hastings Constitutional Law Quarterly* 1.

Puddington A, Piano A, Neubauer K et al, *Freedom in the World: Annual Survey of Political Rights and Civil Liberties* (Rowman and Littlefields 2009).

Rawls J, *Justice as Fairness: A Restatement* (2<sup>nd</sup> ed, Harvard University Press 2001).

Ray SN, *Modern Comparative Politics: Approaches, Methods and Issues* (Princeton-Hall of India Press 1999).

Raz J, 'The Rule of Law and its virtues' (1977) 93 *Law Quarterly Review* 195.

— — *The Authority of Law: Essays in Law and Morality* (Oxford University Press 1979).

— — 'On the Authority and Interpretation of Constitutions: Some Preliminaries' in Larry Alexander (ed), *Constitutionalism: Philosophical Foundations* (Cambridge University Press 1998).

Refworld, 'Freedom in the World 2011-Cameroon' (May 2011) <[www.unhcr.org/refworld/country,,FREEHOU,,CMR,,4dcbf51ec,0.html](http://www.unhcr.org/refworld/country,,FREEHOU,,CMR,,4dcbf51ec,0.html)> accessed 09 February 2012.

Reisman M, 'Introductory Remarks: Symposium Constitutionalism in the Post-Cold War World' (1994) 19(1) *Yale Law Journal* 189.

Reporters without Borders, 'After Visiting Cameroon, Reporters without Borders Urges Government to take Action' (5 October 2011) <<http://en.rsf.org/cameroun-after-visiting-cameroon-reporters-05-10-2011,41120.html>> accessed 12 June 2012.

Reuters Africa, 'Cameroon Presidential Hopeful Quits Ruling Party' (11 January 2011) <<http://af.reuters.com/article/topNews/idAFJOE70A0HZ20110111>> accessed 29 August 2012.

Reyntjens P, 'The Winds of Change: Political and Constitutional Evolution in Francophone Africa, 1990-1991' (1991) 35(1,2) *Journal of African Law* 1.

Rio-Figueroa J and Stanton J, 'Unpacking the Rule of Law: A Review of Judicial Independence Measures' (Caltech-USC Centre for the Study of Law and Politics and University of Texas Law School Symposium, 26-27 March 2009) 12 <<http://lawgip.usc.edu/centers/cslp/documents/Rios-FigueroaandStaton2009.pdf>> accessed 12 March 2011.

R.N.T, 'Repression: Conférence interdite de Kamto' *Le Messager* (Douala, 16 August 2012)<[www.cameroon-info.net/stories/0,36796,@,conference-interdite-de-maurice-kamto-rene-sadi-l-objet-a-ete-change-fogue-tedom.html](http://www.cameroon-info.net/stories/0,36796,@,conference-interdite-de-maurice-kamto-rene-sadi-l-objet-a-ete-change-fogue-tedom.html)> accessed 16 August 2012.

Rogolf M, 'A Comparison of Constitutionalism in France and the United States' (1997) 49 *Maine Law Review* 21.

Rose-Ackerman S, Desierto D and Volosin N, 'Hyper-Presidentialism: Separation of Powers without Checks and Balances in Argentina and Philippines' (2001) 29(1) *Berkeley Journal of International Law* 246.

Rosenfeld M, 'Modern Constitutionalism as Interplay Between Identity and Diversity' in Rosenfeld M (ed), *Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives* (Duke University Press 1994).

— — 'The Rule of Law and the Legitimacy of Constitutional Democracy' (2001) 74 *Southern California Law Review* 1307.

Rosenn K, 'The Protection of Judicial Independence in Latin America' (1987) 19 *University of Miami Inter-American Law Review* 1.

Rotman A, 'Benin's Constitutional Court: An Institutional Model for Guaranteeing Human Rights' (2004) 17 *Harvard Human Rights Journal* 281.

Rubin N, *Cameroon: An African Federation* (Pall Mall 1971).

Ruel M, *Leopard and Leaders: Constitutional Politics Among A Cross River People* (Tavistock Publications 1969).

Russell P, 'Towards a General Theory of Judicial Independence' in Russell P and O'Brien D, *Judicial Independence in the Age of Democracy: Critical Perspectives from around the World* (University of Virginia Press 2001).

Salacuse J, *Legal Systems of Africa Series: French Speaking Africa (Africa South of the Sahara)* (Vol 1, The Michie Company 1969).

— — ‘A Foreword to – Building Constitutionalism in Africa’ (1988) *Third World Legal Studies* xi.

Santiso C, ‘Economic Reform and Judicial Governance in Brazil: Balancing Independence with Accountability’ in Siri Gloppen et al (eds), *Democratisation and the Judiciary: The Accountability Function of Courts in New Democracies* (Frank Cass 2004).

Sargentich T, ‘The Critique of Active Judicial Review of Administrative Agencies: A Re-evaluation’ (1997) 49 *Administrative Law Review* 599.

Schatzberg M, ‘The Metaphors of Father and Family’ in Schatzberg M and Zartman W (eds), *The Political Economy of Cameroon* (Praeger 1986) 1-18.

Scheppele K, ‘Aspirational and Aversive Constitutionalism: The Case for Studying Cross-Constitutional Influences Through Negative Models’ (2003) 1(2) *International Journal of Constitutional Law* 296.

Schor M, ‘Mapping Comparative Judicial Review’ (2008) 7 *Washington University Global Studies Review* 257.

Scoffoni G, ‘The Protection of Human Rights in France’ in Peerenboom R et al (eds), *Human Rights in Asia: A Comparative Legal Study of Twelve Asian Jurisdictions, France and the USA* (Routledge 2006) 65-82.

Seiderman I (ed), *Attacks on Justice: A Global Report on the Independence of Judges and Lawyers* (CIJL 2002).

Seidman LM, ‘Acontextual Judicial Review’ (Selected Works of L. M. Seidman, 2010) <[http://works.bepress.com/louis\\_seidman/2](http://works.bepress.com/louis_seidman/2)> accessed 12 March 2011.

Sénat                      Rapport                      N0.387                      (2008)                      available  
<[www.senat.fr/lng/en/revision\\_constitution.html](http://www.senat.fr/lng/en/revision_constitution.html)> accessed 12 March 2011.

Shapiro M & Sweet AS, *Abstract and Concrete Review in the United States* (Oxford University Press 2002).

Shetreet S, ‘Judicial Independence: New Conceptual Dimensions and Contemporary Challenges’ in Shetreet S and Deschênes J (eds), *Judicial Independence: The Contemporary Debate* (Martinus Nijhoff 1985).

Shivji I, ‘State and Constitutionalism’ in Shivji I (ed), *State and Constitutionalism: An African Debate on Democracy* (SAPES 1991).

Shugart M, 'Semi-Presidential Systems: Dual Executive and Mixed Authority Patterns', (2005) 3 *French Politics* 323.

Shugart M and Carey J, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (Cambridge University Press 1992).

Sieghart P, *The International Law of Human Rights* (Oxford University Press 1983).

Silverstein M and Haltom W, 'The Legitimacy Debate and Judicial Review' (1987) 19(3) *Polity* 486.

Sinkam A, 'Conseil Supérieur de la Magistrature est interpellé' *Journal L'Actu* (19 March 2012) <[www.journallactu.com/POLITIQUE/conseil-superieur-de-la-magistrature-lorganede-sanctions-des-magistrats-est-interpele.html](http://www.journallactu.com/POLITIQUE/conseil-superieur-de-la-magistrature-lorganede-sanctions-des-magistrats-est-interpele.html)> accessed 16 August 2012.

Skach C, 'The "newest" Separation of Powers: Semipresidentialism' (2007) 5(1) *International Journal of Constitutional Law* 93.

Sklar R, 'On the Study of Constitutional Government in Africa' in Akiba O (ed), *Constitutionalism and Society in Africa* (Ashgate 2004).

Squires J, 'Liberal Constitutionalism, Identity and Difference' in Bellamy & Castiglione (eds) *Constitutionalism in Transformation: European and Theoretical Perspectives* (Blackwell 1996).

Stone B, *The French Parlements and the Crisis of the Old Regime* (University of North Carolina Press 1986).

Suffo D, 'Forum sur le Code Électoral : Le G7 opte pour une dynamique inclusive' *Le Messenger* (Douala, 27 August 2012) <[www.cameroon-info.net/stories/0,37086,@,cameroun-l-opposition-se-taille-un-code-electoral-un-forum-a-regroupe-la-societe.html](http://www.cameroon-info.net/stories/0,37086,@,cameroun-l-opposition-se-taille-un-code-electoral-un-forum-a-regroupe-la-societe.html)> accessed 27 August 2012.

Sunstein C, 'Impeaching the President' (1998) 147(2) *University of Pennsylvania Law Review* 279.

Supreme Court of Cameroon, 'Publications de la Cour' <[www.coursupreme.cm/index.php?csc=publications-de-la-cour](http://www.coursupreme.cm/index.php?csc=publications-de-la-cour)> accessed 09 September 2012.

Sustainable Development Network Programme, 'Cameroon: Bridging the IT Gaps' (UNDP) <[www.undpegov.org/sdnp/stories/cameroon.html](http://www.undpegov.org/sdnp/stories/cameroon.html)> accessed 19 August 2012.

Swartz H, *The Struggle for Constitutional Justice in Post-Communist Europe* (University of Chicago Press 2000).

Sweet AS, *The Birth of Judicial Politics in France: The Constitutional Council in Comparative Perspective* (Oxford University Press 1992).

— — *Governing with Judges: Constitutional Politics in Europe* (Oxford University Press 2000).

Takougang J and Krieger M, *African State and Society in the 1990s: Cameroon's Political Crossroads* (Westview Press 1998).

Talla J, 'Les Injustices de la Justice' *Germinal* n°057 (Yaoundé, 26 May 2010) <[germinalnewspaper.com/index.php?option=com\\_content&view=article&id](http://germinalnewspaper.com/index.php?option=com_content&view=article&id)> accessed 20 March 2011.

— — 'Affaire État du Cameroun C/Me Eyoun Et Cie: Quand Le Magistrat Décide En Catimini' *Germinal* n°067 (Yaoundé, 03 November 2010).

Tallon D, Hazard J & Bermann G, 'The Constitution and the Courts in France' (1979) 27(4) *The American Journal of Comparative Law* 567.

Tambulasi R and Kayuni H, 'Can African Feet Divorce Western Shoes? The Case of *Ubuntu* and Democratic Governance in Malawi' (2005) 14(2) *Nordic Journal of African Studies* 147.

Tanoh A & Adjolohoun H, 'International Law and Human Rights Litigation in Côte d'Ivoire and Benin' in Magnus Killander (ed) *International Law and Domestic Human Rights Litigation in Africa* (PULP 2010).

Tchakam S, 'Maurice Kamto Interdit de Conférence de Presse' *Le Jour* (Yaoundé, 25 Jan 2012) <[www.quotidienlejour.com/actualites/politiques/8768](http://www.quotidienlejour.com/actualites/politiques/8768)> accessed 25 January 2012.

Teitel R, 'Human Rights Genealogy' (1997) 66 *Fordham Law Review* 301.

*The Post (webedition)* Issue No. 01079 of 24 August 2009.

Thomas M, *The French Empire Between the Wars: Imperialism, Politics and Society* (Manchester University Press 2005).

Time V, 'The Function of Indigenous Law in a Modern Economic and Political State: The Cameroon Scenario' (2011) 3(9) *Journal of Law and Conflict Resolution* 169.

Tong M, 'Amnesty International Appelle à la Libération de M. T. Atangana et Titus Edzoa' *Journal Actu* (17 December 2012) <[www.camerounactu.net/en/social/social-pool/3078-amnesty-international-appelle-a-la-liberation-de-m-t-atangana-et-titus-edzoa](http://www.camerounactu.net/en/social/social-pool/3078-amnesty-international-appelle-a-la-liberation-de-m-t-atangana-et-titus-edzoa)> accessed 17 December 2012.

Tongue R, 'Rouleau Compresseur: Laurent Eso bloque le verdict de l'affaire Edzoa et Atangana' *Le Messager* (Yaoundé, 19 July 2012) <<http://cameroon.info.net/stories/0,36115,@,rouleau-compresseur-laurent-esso-bloque-...>> accessed on 19 July 2012.

Transparency International Cameroon (TIC), '09 October Presidential Election: Final Report of the Election Observation Mission' (Yaoundé, 14 October 2011) <[www.ti-cameroon.org/doc/Rapport%20final%20d'observation\\_Elections%20prsidentielles\\_TI-C\\_eng.pdf](http://www.ti-cameroon.org/doc/Rapport%20final%20d'observation_Elections%20prsidentielles_TI-C_eng.pdf)> accessed 14 July 2012.

Trembley L, 'General Legitimacy of Judicial Review and the Fundamental Basis of Constitutional Law' (2003) 23(3) *Oxford Journal of Legal Studies* 525.

Trotha von T, 'From Administrative to Civil Chieftaincy: Some Problems and Prospects of African Chieftaincy' (1996) 37-38 *Journal of Legal Pluralism* 79.

Tushnet M 'The Judiciary and Institutions of Judicial Review' (1993) 8 *American University Journal of International Law and Policy* 501.

— — *Taking the Constitution Away from the Courts* (Princeton University Press 2000).

— — 'New Forms of Judicial Review and the Persistence of Rights and Democracy-Based Worries' (2003) *Wake Forest Law Review* 813.

United Kingdom Foreign Office, 'Cameroon Country Profile' (July 17 2006) <[www.fco.gov.uk/servlet](http://www.fco.gov.uk/servlet)> accessed 05 April 2010.

United Nations Commission on Human Rights, 'Report of the Special Rapporteur, Sir Nigel Rodley, Submitted Pursuant to Commission on Human Rights Resolution 1998/38', (2002) UN Doc E/CN.4/2000/9/Add.2.

United Nations Development Programme, 'Governance for Sustainable Human Development' (UNDP policy document, New York, 1997) <<http://mirror.undp.org/magnet/policy/>> accessed 21 October 2012.

United Nations Human Rights Committee (HRC), 'Consideration of Cameroon's Fourth Periodic Report' (12-13 October 2009) UN Doc CCPR/C/CMR/Q/4.

United Nations Human Rights Committee (HRC), 'Consideration of Reports Submitted by States Parties under Article 40 of the Covenant on Civil and Political Rights: Fourth Periodic Report of Cameroon' (19-20 July 2010) CCPR/C/CMR/Q/4/Add.1.

United Nations Human Rights Committee (HRC), 'Concluding Observations of the Human Rights Committee: Cameroon' (04 August 2010) UN Doc CCPR/C/CMR/CO/4.

United States Embassy in Cameroon, 'Human Rights Practices in Cameroon – 2006' (Yaoundé, March 2007) <[http://yaounde.usembassy.gov/cmr\\_human\\_rights.html](http://yaounde.usembassy.gov/cmr_human_rights.html)> accessed 12 March 2011.

United States Department of State, '2008 Human Rights Report: Cameroon' (25 February 2009) <[www.state.gov/j/drl/rls/hrrpt/2008/af/118990.htm](http://www.state.gov/j/drl/rls/hrrpt/2008/af/118990.htm)> accessed 12 June 2012.

United States Department of State, 'Cameroon' in *Background Notes: Central Africa 2011* (InfoStrategist.com, 2011).

Vallee O, *La Police Morale de L'Anticorruption: Cameroun, Nigeria* (Karthala 2010).

Vile MJC, *Constitutionalism and the Separation of Powers* (Clarendon Press 1967).

Viljoen F, *International Human Rights Law in Africa* (Oxford University Press 2007).

Vroom C, 'Constitutional Protection of Individual Liberties in France: The *Conseil Constitutionnel* since 1971' (1988-89)63 *Tulane Law Review* 266.

Vubo Y and Ngwa G, 'Changing Intercommunity Relations and the Politics of Identity in the Northern Mezam Area, Cameroon' (2001) 161 *Cahiers d'Études Africaines* 163.

Waldron J, 'The Core of the Case against Judicial Review' (2006)115 (6) *Yale Law Journal* 1346.

— — 'Constitutionalism - A Skeptical View' in Christiano T and Christman J (eds), *Contemporary Debates in Political Philosophy* (Blackwell Publishers 2009) 267-279.

Walen A, 'Judicial Review in Review: A Four -part Defence of Legal Constitutionalism' (2009) 7(2) *International Journal of Constitutional Law* 329.

Walker N, 'Taking Constitutionalism beyond the State' (2008) 56 *Political Studies* 519.

— — 'Constitutionalism and the Incompleteness of Democracy: An Iterative Relationship' (2010) 39(3) *Netherlands Journal of Legal Policy* 206.

Warnier J, 'Histoire du Peuplement et Genèse des Paysages dans L'ouest Camerounais' (1984) 25(4) *Journal of African History* 395.

Weiler J, 'The Geology of International Law - Governance, Democracy and Legitimacy' (2004) 64 *ZaöRV* 547.

Whittington K, 'An "Indispensable Feature"? Constitutionalism and Judicial Review' (2002)6 *Legislation and Public Policy* 21.

Wiredu K, 'Democracy and Consensus in African Traditional Politics: A Plea for a Non-Party Polity' in Eze E (ed) *Postcolonial African Philosophy: A Critical Reader* (Blackwell 1997) 303-312.

Wiseman N, 'The Questionable Relevance of the Constitution in Advancing Minority Cultural Rights in Manitoba' (1992)25 *Canadian Journal of Political Science* 697.

World Bank, *Governance and Development* (Washington D.C., 1993).

World Organisation Against Torture, 'Cameroon: Series of Enforce Disappearances in the North Province' (CMR 04 April 2008) <[www.omct.org/urgent-campaigns/urgent-interventions/cameroon/2008/04/d19217/](http://www.omct.org/urgent-campaigns/urgent-interventions/cameroon/2008/04/d19217/)> accessed 05 April 2012.

Woodhouse D, 'Judicial Independence and Accountability in the UK' in Canivet G, Andenas M and Fairgrieve D (eds), *Judicial Independence and Accountability* (British Institute of International and Comparative Law 2006).

Woodman G, 'Legal Pluralism and the Search for Justice' (1996) 40(2) *Journal of African Law* 152.

Yanou M, 'The Local Courts, Decentralisation and Good Governance: The Case of the English Speaking Provinces of Cameroon' (2009) 13(5) *The International Journal of Human Rights* 689.

Zoethout C and Boon P, 'Defining Constitutionalism and Democracy: An Introduction' in Zoethout C and Boon P, *Constitutionalism in Africa: A Quest for Autochthonous Principles* (Sanders Institute: GQ-D 1996).